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# Supreme Court.

CHENANGO COUNTY.

588

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ANNA N. DWIGHT, ORLOW W. CHAPMAN  
AND GEORGE F. LYON, AS EXECUTRIX  
AND EXECUTORS OF THE LAST WILL  
AND TESTAMENT OF WALTON  
DWIGHT, DECEASED,  
RESPONDENTS,

*against*

THE GERMANIA LIFE INSURANCE COM-  
PANY, APPELLANT.

---

## CASE AND EXCEPTIONS.

---

SHIPMAN, BARLOW & LAROCQUE,  
*Attorneys for Appellant,*  
35 WILLIAM STREET, NEW-YORK CITY.  
G. L. SESSIONS,  
*Attorney for Respondents,*  
BINGHAMTON, NEW-YORK.

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New-York:

HENRY BESSEY, LAW PRINTER,  
No. 47 CEDAR STREET.

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Ogdensburg Nov 1<sup>st</sup> 1884.

John S. Billings M.D.  
Surgeon U. S. Army  
Librarian S. G. O.  
Washington.  
D. C.

Dear Sir:

I have mailed to you to-day  
a copy of the proceedings before the Coroner in the  
Swight Case. You will need it in making up the  
record. I have not yet got a copy of Respondent's  
Points for you. I respectfully request your special  
attention to Autopsy printed in the Appendix to  
Case. Page 895. and in connection therewith, to the  
Special Report of Prof Francis Delafield to the  
Equitable Life Insurance Company. You will  
oblige me by acknowledging the receipt of the books.

Truly Yours

L. Mapone



Ogdensburg Nov 6<sup>th</sup> 1884,  
Doctor J. S. Billings  
Surgeon General's Office  
Washington  
D. C.

Dear Sir;

I am in receipt of your favor of the 30<sup>th</sup> ultimo. I am satisfied that I erred in not correctly expressing my wish to you. Certainly I did not intend either to exact or even suggest that you should read the mass of facts and fiction included in the Dwight case, but only the medical or so called expert evidence. This portion of the case is of great importance to the scientific world. To your learned profession the civilized world is indebted not only for great discoveries in protecting us against the spread of disease and in relieving us against it when contracted in the heroic field of surgery but also in detecting crime. The average gentleman



any of the learned professions but your own, is as incapable of detecting secret crimes by poison and other subtle agencies as the laborer or mechanic, and were it not for your great profession, coupled with its hand-maid the Chemist, the poisoner could go unchallenged in his deadly work.

To collect and formulate the facts that are usually found on proper examination of a dead body which will surely indicate by the post mortem appearance and lesions the true cause of death, whether by poison, strangulation or other form of homicidal murder, was the merciful work of your great profession. These facts applied to any given case enables the Scientist to find even the most subtle poison in the contents of the stomach in the blood or tissues of the flesh.

For a high judicial officer sitting on the Bench, charged to hold evenly the scales of justice, to wilfully throw suspicion on your exalted profession, called upon me to protest and so far as I can, protect my own profession from being charged with acquiescence in the gross and scandalous assailed from the Bench. I have conscientiously tried to protect my own profession and in the effort, most

I most respectfully urge upon you, to give me  
what light you can. The task to examine the  
medical questions will not be great.

I anticipate putting the results of my labor into  
more lasting form, either by publication in one of  
the best and most widely circulated medical journals  
in this country or in Europe, perhaps in both, and  
therefore I crave such additional aids as I hope  
you will try and give me.

Truly Yours

W. Mayone



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# Supreme Court,

CHENANGO COUNTY.

ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
Executrix and Executors, &c., of  
WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

1

Notice is hereby given, that the defendant above  
named appeals to the General Term of the Supreme  
Court from the judgment for the sum of \$20,668.46  
damages and costs, entered on the 23d day of May,  
1884, in the office of the Clerk of the county of  
Chenango, in favor of the plaintiffs in this action, on  
the verdict of a jury rendered at a Circuit Court,  
held in and for the county of Chenango, on the 2d  
Monday of November, 1883, and from each and  
every part of the said judgment.

2

Also, that on such appeal the said defendant in-  
tends to bring up for review the order denying the  
said defendant's motion for a new trial, entered at  
said Circuit Court, and bearing date the 13th day  
of December, 1883.

Dated New-York, May 26th, 1884.

3

Yours, &c.,

SHIPMAN, BARLOW & LAROCQUE,

*Attorneys for Defendant,*

35 William Street,

New-York City.

To G. L. SESSIONS, Esq.,

*Attorney for Plaintiffs.*

ANDREW SHEPARDSON, Esq.,

*Clerk.*



## SUPREME COURT,

TRIAL DESIRED IN BROOME COUNTY.

---

ANNA N. DWIGHT, ORLOW W.  
 4    CHAPMAN and GEORGE F. LYON,  
       as Executrix and Executors of  
       the last Will and Testament of  
       WALTON DWIGHT, deceased,  
    *against*  
 THE GERMANIA LIFE INSURANCE  
    COMPANY.

---

*To the above named Defendant :*

You are hereby summoned to answer the com-  
 plaint in this action, and to serve a copy of your  
 answer on the plaintiffs' attorney within twenty  
 5    days after the service of this summons, exclusive  
 of the day of service, and in case of your failure to  
 appear, or answer, judgment will be taken against  
 you by default for the relief demanded in the com-  
 plaint.

Dated, Binghamton, April 19th, 1879.

G. L. SESSIONS,  
*Plaintiffs' Attorney.*

Office Address, 48 Court Street,  
 Binghamton, New-York.

Post-Office Address,  
 6    Binghamton, New-York.



SUPREME COURT,  
BROOME COUNTY.

ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
as Executrix and Executors of  
the last Will and Testament of  
WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

7

*Complaint.*

The plaintiffs complaining of the above named defendant, allege upon information and belief, the following facts, constituting their cause of action :

That the defendant was, at the time and times hereinafter mentioned, and still is a corporation, duly created and organized, by the name of the Germania Life Insurance Company, under and in pursuance of the laws of the State of New-York, and carrying on the business of life insurance, with its principal office for the transaction of business in the city of New-York. 8

That on or about the 28th day of August, 1878, the defendant, in consideration of the payment to it by Walton Dwight, of Windsor, Broome County, N. Y., on the delivery of said policy, of the sum of one hundred and thirty-one dollars and fifty-five cents, and of the quarterly payment to be made of a like amount on or before noon of the 28th day of November, February, May and August in every year during the continuance of the policy, assured the life of said Walton Dwight in the sum of fifteen thousand dollars, for the term of his natural life, by its policy number 69,096, bearing date August 28th, 1878, a copy of which policy is hereto annexed as a part of this com- 9

plaint, and marked "Exhibit A," and therein promised and agreed to pay at its office in the city of New-York, within sixty days after due notice and proof of the death of said Walton Dwight, the said sum assured (the balance of the year's premium, if any, being first deducted therefrom) to the executors, administrators or assigns of the said assured.

That on or about the 15th day of November, 1878, said Walton Dwight died at Binghamton, N. Y., leaving a last will and testament, in and by which the plaintiffs were duly appointed executrix and executors thereof.

That thereupon and thereafter there was no officer qualified to act as Surrogate in the matter of proceedings of the probate of said last will and testament in the Surrogate's Court of said county of Broome, and that the Surrogate of said county thereupon duly made a certificate of such disqualification, specifying the grounds thereof, and the name of Charles A. Clark, Surrogate of the adjoining town of Tioga, and filed the same in his office; and that other and all necessary proceedings were duly had so that jurisdiction became vested in said Charles A. Clark, Surrogate, and that on or about the 30th day of December, 1878, said last will and testament was duly proved and duly admitted to probate by said Charles A. Clark, Surrogate, and letters testamentary thereon duly issued and granted to the plaintiffs as such executrix and executors by said Charles A. Clark, Surrogate; and the plaintiffs thereupon duly qualified as such executrix and executors, and entered upon the discharge of the duties of such office, and still are the duly appointed and constituted executrix and executors of the last will and testament of said Walton Dwight.

That on or about the 20th day of January, 1879, and more than sixty days prior hereto, the plaintiffs as such executrix and executors, duly gave the

defendant due notice and proof of the death of said Walton Dwight.

That said Walton Dwight duly performed and complied with all the provisions and agreements contained in said policy, to be kept and performed by him; and that the representations contained in the application for said policy were in all respects true; and that said policy was valid and in full force and effect at the time of the death of said Walton Dwight; and that such death was not caused by any of the causes excepted in said policy and that said Walton Dwight has not done any of the acts stated in said policy as rendering the same void; and that said policy has not ceased and become null, void and of no effect by reason of any act, thing or omission upon the part of said Walton Dwight or otherwise; and that the plaintiffs as such executrix and executors have made due and sufficient demand, and have duly done and performed all things requisite to be done and performed upon their part.

That the defendant has duly refused to pay said sum or any part thereof, and that no part of the said sum assured has been paid, and that there is now due and owing to the plaintiffs from the defendant the sum of fifteen thousand dollars, with interest thereon from February 22, 1879, less the three quarterly payments of \$131.55 each.

Wherefore, the plaintiffs demand judgment against the defendant for the sum of fourteen thousand six hundred and five dollars and thirty-five cents, with interest thereon from March 22d, 1879, together with the costs of this action.

G. L. SESSIONS,  
*Plff's Att'y*,  
 48 Court Street,  
 Binghamton, N. Y.

STATE OF NEW-YORK, }  
*County of Broome.* } ss. :  
 City of Binghamton. }

ANNA N. DWIGHT, ORLOW W. CHAPMAN and  
 GEORGE F. LYON, being severally duly sworn, each  
 16 for himself and herself deposes and says, that de-  
 ponent is one of the plaintiffs in the above entitled  
 action; that the foregoing complaint is true to the  
 knowledge of deponent, except as to the matters  
 therein stated to be alleged on information and be-  
 lief, and that as to those matters deponent believes  
 it to be true.

ANNA N. DWIGHT,  
 O. W. CHAPMAN,  
 GEORGE F. LYON.

Sworn to before me, this 19th }  
 day of April, 1879. }  
 17 E. M. FITZGERALD,  
*Com. of Deeds,*  
 City of Binghamton, N. Y.

---

**"Exhibit A."**

LIFE POLICY, NUMBER 69,096 ; AMOUNT \$15,000 ;  
 QUARTERLY PREMIUM \$131.55 ; AGE 41 YEARS.

The Germania Life Insurance Co. in the city of  
 New-York, in consideration of the representations  
 18 made to them in the application for this policy,  
 and of the sum of one hundred and thirty-one dol-  
 lars and fifty-five cents, to be paid on delivery of  
 this policy, by Walton Dwight, and of the quar-  
 terly payment, upon the receipt of the president  
 or secretary of the company, of a like amount on  
 or before noon of the twenty-eighth day of Novem-  
 ber, February, May and August in every year dur-  
 ing the continuance of this policy, do assure the  
 life of Walton Dwight, of Windsor, in the county  
 of Broome, State of New-York, in the amount of

fifteen thousand dollars, for the term of his natural life.

And the said company do hereby promise and agree to pay, at their office in the city of New-York, within sixty days after due notice and proof of the death of the said assured, the said sum assured (the balance of the year's premiums, if any, being first deducted therefrom), to the executors, administrators or assigns of the said assured. This policy also entitling the said assured to a participation in the profits of the company according to its charter. 19

This policy is issued, and the same is accepted by the said assured, upon the following express conditions and agreements ; that the same shall cease and be null, void and of no effect ; and that this company shall not be liable for the payment of the sum assured, or any part thereof, but that all premiums previously paid shall be absolutely property of the company, without any account whatever to be rendered therefor, except as hereinafter provided in the 4th condition of this policy ; 20

1st. If the representations made in the application for this policy, upon the faith of which this contract is made, shall be found in any respect untrue ;

2d. If the said assured shall visit, between the first day of July and the first day of November, those parts of the United States which lie south of Virginia, Kentucky, Missouri and Kansas ; or pass beyond the limits of the United States, excepting into the territory lying in America north of the United States ; or enter upon a voyage upon the high seas, except coastwise within the same latitudes and between the same days of the year, within and between which the said person is at liberty to be or reside by the terms of this policy, without having previously obtained the written consent of the company for any of these visits, residences or voyages ; but permission is hereby given to the said 21



assured to travel between those ports of the United States in which he or she is at liberty to be by the terms of this policy, and the ports of Europe, and to travel and reside in Europe ;

22 3d. If the said assured, without the previous written consent of this company, shall enter upon service on any sea, sound, inlet, river, lake or railroad, as a mariner, engineer, fireman, conductor or laborer in any capacity ; or, in the manufacture of gunpowder or fireworks ; or, in submarine operations or mining ; or, into any military or naval service whatsoever ; the militia not in actual service excepted ; or shall act as sutler, or purser, or assistant or servant to a sutler or purser, to any military or naval force in actual service, or accompany any such military or naval force as a camp follower or otherwise ;

23 4th. If the said assured shall die by suicide, or by his or her own hand, or in consequence of an attempt to commit suicide, or to take his or her own life ; provided however, that if any of these acts be committed while in a condition of mental derangement or insanity, the company agrees to pay upon return of the policy thus voided, the full legal reserve thereof ;

24 5th. If the said assured shall die in, or in consequence of a duel ; or, by the hands of justice ; or in consequence of the violation of any law of these States, or of the United States, or of any other country which he or she may be permitted under this policy to visit or reside in ;

6th. If the above premiums, or any of them, shall not be paid on or before noon of the several days hereinbefore mentioned for the payment thereof respectively, or within three days thereof respectively.

It is however agreed, that if this policy shall, after three or more whole years' premiums shall have been paid, become void by non-payment of

premium, the company will, on due surrender of this policy and all the additions thereto, if such surrender shall be made within three months after this policy shall thus have become void, grant an equitable surrender value, in cash or in a paid-up policy, at the option of the company.

It is also agreed by the said assured, that written notice shall be given to the company of any assignment of this policy. 25

It is also agreed, that no suit shall be brought against the company on any claim under this policy, unless said suit be commenced within two years from the time when the right of action accrues, and also within three years from the termination of the life insured.

It is also agreed, that this contract shall become valid only by delivery of this policy, and upon payment of the first premium due, during the continued good health of the said assured. 26

In witness whereof the said Germania Life Insurance Company have by their president and secretary, executed this contract at New-York, on this twenty-eighth day of August, eighteen hundred and seventy-eight.

C. DOREMUS,

*Secretary.*

HUGO WESENDONK,

*President.*

Agents holding an appointment from the company are authorized to receive premiums at or before the time when due, upon the receipt of the president or secretary of the company, but not to make, alter or discharge contracts, or waive forfeitures. 27

SUPREME COURT,  
BROOME COUNTY.

28 ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
as Executrix and Executors of  
the last Will and Testament of  
WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

*Answer.*

The answer of the defendants to the complaint of the above named plaintiffs.

29 *First.*—The said defendants, answering the said complaint, admit that at the times in that behalf alleged in the said complaint, the said defendants were, and still are, a corporation duly created and organized, by the name of the Germania Life Insurance Company, under and in pursuance of the laws of the State of New-York, and carrying on the business of life insurance, with their principal office for the transaction of business in the city of New-York.

30 They further admit, that on or about the 28th August, 1878, a policy of insurance, bearing that date, and numbered 69,096, on the life of one Walton Dwight, represented to be of Windsor, in the County of Broome, State of New-York, for the term of his natural life, was obtained from these defendants by the said Walton Dwight, and that the said Walton Dwight paid to these defendants the sum of \$131- $\frac{5.5}{100}$ , as and for the premium on said policy, for the period of three months, and that said policy was substantially in the form of the paper attached to the said complaint, marked



“Exhibit A.” But these defendants, upon information and belief, deny that the said paper so attached to said complaint, marked “Exhibit A,” is in all respects a true copy of the said policy hereinbefore referred to, or that the said policy is correctly described in the said complaint, and they, therefore, controvert the allegations of the said complaint in that behalf, and crave leave to refer to the original policy in question, when the same shall be produced and proved, for the precise terms of said policy. And these defendants, upon information and belief, deny that at the time in that behalf alleged in said complaint, or at any other time upon the considerations or condition stated in that behalf in said complaint, or upon any other consideration or conditions, they assured the life of the said Walton Dwight in the sum or for the term in that behalf alleged in the said complaint, or in any other sum or for any other term under the said policy number 69,096, in the said complaint referred to, and they deny that the said policy, hereinbefore mentioned and intended to be described in the said complaint, ever had any valid existence as a contract on the part of these defendants. 31 32

These defendants further answering deny, that they have any knowledge or information sufficient to form a belief as to whether or not the said Walton Dwight died at Binghamton, New-York, or left a last will and testament, in or by which the plaintiffs were duly appointed executrix and executors thereof. 33

These defendants further answering, say, that they have no knowledge or information sufficient to form a belief as to the truth of the allegations in said complaint contained, touching the proceedings for the probate of the said supposed will of the said Walton Dwight, and the granting of letters testamentary thereupon, or any or either of said allegations, and they, therefore, controvert the said allegations and each and every of them.

The said defendants further answering, admit, that on or about the 20th day of January, 1879, and more than sixty days prior to the commencement of this action, the plaintiffs, claiming to be executrix and executors of the will of said Walton Dwight, caused to be furnished to these defendants papers purporting to be notice and proof of the death of said Walton Dwight; but these defendants, upon information and belief, deny that the said papers constituted due notice and proof of the facts therein alleged.

The said defendants, further answering upon information and belief, deny that the said Walton Dwight duly performed or complied with all the provisions and agreements contained in said policy, to be kept and performed by him; and they, upon information and belief deny that the representations contained in the application for said policy were, in all respects, true; and they particularly deny the representations contained in the application for said policy, touching the previous condition of health of the said Dwight, and especially in regard to his ever having had spitting of blood or bronchitis, and the representations respecting other insurances upon the life of the said Walton Dwight, or any or either of them, were or are true; and they deny, upon information and belief, the allegations of said complaint to the effect that the said policy was valid or in full force or effect at the time of the alleged death of the said Walton Dwight, and they deny, upon information and belief, the allegations of said complaint, to the effect that such death was not caused by any of the causes excepted in said policy, and particularly so much of said allegations as allege that the supposed death was not caused by suicide, or by the hand of the said Walton Dwight, or in consequence of an attempt on his part to commit suicide, or take his own life, or in consequence of the violation of any law of this State, and they deny, upon information and belief, that the said policy has

not ceased, and become null and void and of no effect by reason of any act, thing or omission on the part of the said Walton Dwight, and particularly so much of said allegations as allege that the said policy had not become void by reason of representations made in the application for said policy, and upon the faith of which the same was obtained from the defendants, being found untrue, and so much of said allegations as allege that the said policy has not ceased and become null, void and of no effect, by reason of the said Dwight having died by suicide, or by his own hand, or in consequence of an attempt to commit suicide, or to take his own life, or by reason of the said Dwight having died in consequence of a violation of any law of this State. 37

And these defendants, further answering, upon information and belief, deny that the said alleged executrix and executors, plaintiffs herein, have made due and sufficient demand, or have duly done and performed all things requisite to be done and performed upon their part. 38

The said defendants, further answering, admit that they have duly refused to pay the said sum in the complaint mentioned, or any part thereof, and that no part of the sum claimed to have been assured has been paid; and, upon information and belief, they deny that there is now due or owing, from the defendants to the said plaintiffs, the sum in that behalf alleged in the said complaint, or any sum whatever.

The said defendants, further answering, deny each and every allegation in the complaint contained, not hereinabove expressly admitted, controverted or denied. 39

*Second.*---And for a second, separate and distinct defence, the said defendants, relying upon the denials, admissions and allegations in the preceding first defence contained, in the same manner as if the same were here repeated, and praying that the

same may be taken and regarded as part of this defence, further answering, say, that upon the application for the policy in the said first defence mentioned, the following question was put to the said Walton Dwight, namely :

“ 2. C. In what occupation has he been engaged during the last ten years ? ”

40 And in answer thereto, the said Walton Dwight stated as follows : “ Real estate and grain dealer.”

And upon said application a further question was put to the said Walton Dwight as follows :

“ 2. D. Is he now or has he been engaged or connected with the manufacture or sale of any beer, wine or other intoxicating liquors,” to which question the said Walton Dwight answered “ No.”

And upon the said application, a further question was put to the said Walton Dwight as follows :

41 “ 16. Has the party ” (meaning the said Walton Dwight) “ now, or has the same ever had, any of the following diseases : spitting of blood, bronchitis, consumption, liver complaint, rheumatism,” etc. ?

And in answer to said question the said Walton Dwight denied that he had ever had any of the said diseases specified, except rheumatism.

And upon said application, a further question was put to the said Walton Dwight as follows :

“ 6. A. Whether the party to be assured is now or has been insured in this company ; if so, state the number of the policy and the amount. B. Whether in other companies, in which, for what amount in each ; state exactly on what kind of policy.”

42 That in answer to so much of said question as related to insurance in other companies, the said Walton Dwight stated and represented, that he was insured in the “ New-York Mutual,” thereby meaning and intending the Mutual Life Insurance Company of New-York, by a fifteen years’ endowment policy for \$10,000 ; in the Connecticut Mutual Insurance Company, in an ordinary life policy for \$15,000 ; in the Washington, in an ordinary life



policy for \$10,000, and in the Equitable, on an ordinary life policy for \$10,000.

That upon said application a further question was put to the said Walton Dwight as follows :

“ 6. C. Whether an insurance has been applied for with this or any other company, without having led to an insurance? If so, with which companies, and for what reason did the application not lead to an insurance?” And that to said question the said Dwight answered “ No.” 43

That the said answers were given in writing by the said Dwight over his own signature, and that in and by the said application it was declared by the said Walton Dwight, that the answers given by him were fair and true answers to the questions put to him, and it was acknowledged and agreed by the said Dwight that the statements made and embodied in the answers to the questions contained in said application were to form the basis of the contract for insurance for which he then applied, and that any untrue or fraudulent answers, and any suppression of facts in regard to his health, should render the policy null and void, and forfeit all payments made thereon. 44

That the said application bears date on the 22d day of August, 1878, and was filed with these defendants as the basis on which the said policy number 69,096 was applied for, and is the same application mentioned and referred to in the said policy, and is now in the possession of these defendants ready to be produced and proved as this Court may direct. 45

And these defendants, further answering upon information and belief, say, that the said answers and statements hereinbefore referred to were each and every of them material to the risk which the defendants were asked to assume, and upon the question as to whether or not a policy should be granted by the defendants, and that each and every of the said answers and statements contained in said ap-

plication, and hereinbefore specified, was false and untrue in the following respects :

46 That during a considerable portion of the ten years preceding the date of said application, and during which the said Dwight stated his occupation to have been "real estate and grain," he had in point of fact been engaged in keeping a hotel, which fact was fraudulently suppressed by him, and that in the course of said business as a hotel-keeper the said Walton Dwight had been engaged in and connected with the sale of beer, wine and other intoxicating liquors.

47 That prior to the application for the said policy, the said Walton Dwight had had bronchitis and spitting of blood ; that at the time of the said application the said Walton Dwight, having applied to the Mutnal Life Insurance Company of New-York for a policy on the life plan, had failed to obtain such policy, and that the said Mutual Life Insurance Company of New York refused to issue any policy upon the life of the said Dwight ; that the said Dwight at the time of the said application, and at the time of making the statements hereinbefore mentioned, had not, and never had a policy in the Connecticut Mutnal Life Insurance Company for \$15,000, or any sum, and that at the time when said application was made the said Dwight had other insurances upon his life in addition to those specified by him, which fact he suppressed, and had made application for insurance to one or more companies to this defendant unknown, which had  
48 not led to an assurance.

And these defendants say, that by reason of said untrue and fraudulent answers to the said questions put to the said Dwight upon his application for the said policy, and his said false statements and suppressions and concealments of material facts and breaches of warranty, the said policy, number 69,096, was rendered null and void, and of no effect, and was forfeited, and these defendants.

were, and are, released and discharged from any and all liability thereon.

*Third.*—And for a third, separate and distinct defence, the said defendants, further answering the said complaint, upon information and belief say that the said Walton Dwight, designedly, and not while in a condition of mental derangement or insanity, died by suicide, and committed self-murder, or procured the taking of his own life, whereby the said policy became null and void, and all claim against these defendants thereon was forfeited and discharged. 49

*Fourth.*—For a fourth, separate and distinct defence, the said defendants, further answering the said complaint, allege, on information and belief, that said Walton Dwight, with the pre-conceived intent to cheat and defraud these defendants, by thereafter taking his own life, and thus defrauding the defendants of the amount of said policy, procured the said policy of insurance, and thereafter did take, or procure the taking, of his own life, with the said pre-conceived design and intent thereby to cheat and defraud these defendants of the amount of said policy, whereby the said policy became null and void, and all claim against these defendants thereon was forfeited and discharged. 50

*Fifth.*—For a fifth, separate and distinct defence, and by way of counterclaim, the said defendants allege, on information and belief, that said Walton Dwight, previously to obtaining said policy of insurance, formed a design and conspired with one or more persons, to defendants unknown, to commit a fraud upon a number of life insurance companies, and among others, upon these defendants, by procuring a large amount of insurance upon his life, and thereafter wilfully taking or procuring his life to be taken, and said insurance to be collected from the said insurance companies respectively, under the 51

false pretense that his death resulted from natural causes. That in pursuance and in execution of said felonious design, conspiracy and fraud, said Dwight, who was then insolvent, applied to said companies for insurance upon his life to the aggregate amount of about \$350,000, and procured poli-  
 52 cies of insurance thereon to the aggregate amount of about \$250,000, and among other policies so procured was the policy from the defendants mentioned in the complaint.

That the said policies of insurance were so procured that the premiums should be payable quarterly, so as to enable the said Dwight to obtain much more insurance for the sum disbursed than he otherwise could, and with the intent that the death of said Dwight should be accomplished before the second quarter's premium became payable. That the money to pay the first quarter's premium was furnished to said Walton Dwight, in whole or  
 53 in part, by one or more persons engaged with him in said conspiracy, to defendants unknown, he himself having no means to pay the same.

That after procuring the said policies of insurance, said Dwight made an instrument, purporting to be a last will and testament, directing the manner in which the proceeds of said fraud should be distributed, and therein, in form, making a large number of bequests of a public character, and to persons holding official positions, which alleged bequests were intended to enlist the sympathy of the persons proposed to be benefited thereby, and the com-  
 54 munity in which said Dwight resided, in behalf of said scheme, and to aid in carrying out said fraud, pursuant to his said preconceived design and conspiracy to cheat and defraud these defendants and the other life insurance companies to whom applications for policies were made by him as aforesaid. That the statements of fact, and of the objects, intents, expectations and belief of the said Dwight, contained in said instrument, including the state-



ments touching his pecuniary resources, earning capacity and means of paying premiums which might accrue upon said policies, were each and every of them false and fraudulent, and made in aid and furtherance of said fraudulent scheme and conspiracy.

That immediately thereafter, and before any of the second quarter's premiums became due and payable, said Walton Dwight, in pursuance of said fraudulent scheme, design and conspiracy, and in further execution thereof, wilfully and feloniously took his own life, or procured or allowed it to be taken. 55

That since the death of said Dwight, his alleged executors, aided and abetted by one or more of those who are named as beneficiaries in said instrument, have endeavored and are endeavoring to consummate the said conspiracy and fraud, by attempting to enforce payment of said insurance from these defendants and the other life insurance companies upon which said fraud was perpetrated, under the pretence that said Dwight died a natural death, and for that purpose have commenced this action. That by reason of the premises, the said insurance policy is null and void, and never had validity, and the defendants are not and never were, liable thereon for the payment of any sum whatever. 56

And these defendants further say, that the existence of said policy in the hands of said plaintiffs exposes these defendants to danger of unjust suits and litigations thereupon; that these defendants are willing, and offer, upon the surrender and cancellation of said policy, to return the amount paid by the said Walton Dwight, as the first quarter's premium on said policy at the time he obtained the same, as hereinbefore set forth. 57

Wherefore, these defendants pray judgment that the said policy be delivered up to them to be cancelled, and that they may have such further or

other judgment or relief in the premises as may be just.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,  
*Attorneys for Defendants,*  
 35 William Street, N. Y.

58 *City and County of New-York, ss.:*

CORNELIUS DOREMUS, of said city, being duly sworn, says that he is the Secretary of the Germania Life Insurance Company, the defendants above named; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

C. DOREMUS.

Sworn to before me, this {  
 14th day of July, 1879. }

59

JAMES E. BEDELL,  
*Notary Public,*  
 Kings County.

Certificate filed in city and county of New-York.

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## SUPREME COURT.

60 ANNA N. DWIGHT, ORLOW W.  
 CHAPMAN and GEORGE F. LYON,  
 as Executrix and Executors of  
 the last Will and Testament of  
 WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
 COMPANY.

*Reply.*

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The plaintiffs herein, replying to the counter-

claim contained in the answer of the defendant in this action upon information and belief, deny the same and each and every allegation therein contained.

G. L. SESSIONS,  
*Plaintiffs' Attorney,* 61  
 48 Court Street,  
 Binghamton, N. Y.

STATE OF NEW YORK, }  
*Broome County.* } ss. :

GEORGE F. LYON, one of the plaintiffs in this action, being duly sworn, says that the foregoing reply is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

GEORGE F. LYON. 62

Sworn to before me, this 14th }  
 day of August, 1879. }  
 NERI PINE,  
*Notary Public.*

STATE OF NEW YORK, }  
*Broome County.* } ss. :

ANNA N. DWIGHT, of Windsor, and ORLOW W. CHAPMAN, of Binghamton, in said county, two of the plaintiffs in this action, being duly sworn, each says that the foregoing reply is true to his and her knowledge, except as to the matters therein stated 63  
 to be alleged on information and belief, and that as to those matters they believe it to be true.

O. W. CHAPMAN,  
 ANNA N. DWIGHT.

Sworn to before me, this 19th }  
 day of August, 1879. }  
 NERI PINE,  
*Notary Public.*

At a Special Term of the Supreme Court, held in and for the County of Broome, at the Court House, in the City of Binghamton, N. Y., on the 21st day of October, 1879.

64 Present,—Hon. DAVID L. FOLLETT, *Justice*.

# SUPREME COURT.

65	ANNA N. DWIGHT, ORLOW W. CHAPMAN and GEORGE F. LYON, as Executrix and Executors of the last Will and Testament of WALTON DWIGHT, deceased, <i>against</i> THE GERMANIA LIFE INSURANCE COMPANY.
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This motion to change the place of trial of this action coming on to be heard upon due notice, upon reading and filing the affidavit of Cornelius Doremus, in support of said motion, and the affidavits of Orlow W. Chapman, Joseph M. Johnson, Edmund O'Connor, Harper Dusenbury, John Anderson and James L. Weed, in opposition thereto, and on reading and filing the pleadings herein; and after hearing Joseph Larocque in favor of said motion, and Henry Smith and G. L. Sessions in opposition thereto, it appearing to the satisfaction of the Court that there is reason to believe that an impartial trial of this action cannot be had in the county of Broome, and that the ends of justice will be promoted by a change of the place of trial thereof.

Ordered, that the place of trial of this action be, and the same hereby is, changed from the county of Broome to the county of Chenango.

At a Special Term of the Supreme Court, held in and for the County of Broome, at the Court House, in the City of Binghamton, N. Y., commencing on the 21st day of October, 1879.

67

Present,—Hon. DAVID L. FOLLETT, *Justice*.

# SUPREME COURT.

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ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
as Executrix and Executors of  
the last Will and Testament of  
WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

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68

On reading and filing the summons and complaint, answer and reply herein, and the affidavits of Anna N. Dwight, Orlow W. Chapman and George F. Lyon, and the affidavit of G. L. Sessions with notice of motion for an order that the defendant deliver to the plaintiffs' attorney a bill of particulars, &c., and for further relief, as more fully appears from said notice of motion in support of said motion; and on reading and filing the affidavit of Joseph Larocque in opposition thereto, and after hearing Henry Smith and G. L. Sessions in favor of said motion, and Joseph Larocque in opposition thereto,

69

Ordered, that the defendant deliver to the plaintiffs' attorney, within twenty days from the entry of this order and notice thereof, a statement in writing under oath, stating the particular times and places at which the defendant intends or ex-



pects to prove that said Walton Dwight had bronchitis and spitting of blood, or either of them ; also stating what other insurances upon his life in addition to those specified by him in his application, the defendant intends or expects  
 70 to prove that said Walton Dwight had at the time when said application was made, specifying particularly the name of each company with the date and amount of each policy ; also stating what application for insurance to one or more companies which had not led to an assurance, the defendant intends or expects to prove that said Walton Dwight had made at the time when said application for the policy upon which this action is brought was made, specifying particularly the name of each company to which application had been so made, with the time when made and the date of each application.

71 And it is further ordered, that the defendant be precluded from giving evidence upon the trial that said Walton Dwight had had bronchitis and spitting of blood or either of them at any time and place ; and that said Walton Dwight had any insurances upon his life at the time when said application was made in addition to those specified by him in said application ; and that said Walton Dwight had made at the time when said application for the policy upon which this action is brought was made, any applications for insurance which had not led to an insurance—other than is so specified in such  
 72 bill of particulars.

It is further ordered that the plaintiffs have the costs of this motion.

At a General Term of the Supreme Court of the State of New York, held in and for the Third Department, at Ithaca, in the County of Tompkins, on the 4th day of May, 1880.

73

Present,—The Hon. WILLIAM L. LEARNED, *Presiding Justice*.

The Hon. AUGUSTUS BOCKES, } JUSTICES. The latter taking no part.  
The Hon. C. E. MARTIN. }

ANNA N. DWIGHT, ORLOW. W. }  
CHAPMAN and GEORGE F. LYON, }  
as Executrix and Executors of }  
the last Will and Testament of }  
WALTON DWIGHT, deceased, }

*Respondents,*

*against*

THE GERMANIA LIFE INSURANCE }  
COMPANY, }

*Appellant.*

74

This cause having been brought to a hearing at a General Term of this Court, begun and holden at Ithaca, in the county of Tompkins, on the 4th day of May, 1880, upon the appeal taken by the defendant from an order made in said action at a Special Term of this Court, held in and for the county of Broome, at the Court House in the city of Binghamton, on the 21st October, A. D. 1879, by the Hon. David L. Follett, one of the Justices of this Court, presiding at said term, directing that the defendant deliver to the plaintiffs' attorney, within twenty days from the entry of said order and notice thereof, a statement, in writing, under oath, setting forth certain particulars in the said order specified, and Mr. Joseph Larocque, of counsel for the appellant, having been heard in support of the

75

appeal, and Mr. Henry Smith, of counsel for the respondent, having been heard in opposition, and due deliberation having been had, it is now *ordered* that the said order of the said Special Term, appealed from, be and the same is hereby modified by adding at the end thereof the following provision, that is to say :

76 "It is further ordered that neither any bill of  
 " particulars which may be furnished pursuant to  
 " this order, nor anything in this order contained,  
 " shall be so construed as to prevent or have the  
 " effect of preventing the defendants from giving  
 " evidence of any declarations or statements, oral  
 " or written, made by the said plaintiffs' testator,  
 " Walton Dwight, on the subject of his having had  
 " bronchitis or spitting of blood at any time prior  
 " to the application for the policy on which this  
 " action is founded, and which declarations or  
 77 " statements were general as to the times and places  
 " when and where the said Walton Dwight had  
 " said ailments, or either of them, or from giving  
 " evidence of any other confessions of said Dwight  
 " which are otherwise admissible and which relate  
 " to matters set up in defence, which confessions  
 " are general as to the times and places of the mat-  
 " ters in said confessions mentioned and con-  
 " fessed."

And it is further ordered, that the said order appealed from as so modified be and the same is hereby affirmed, and that the costs of the said appeal and disbursements for printing papers there-  
 78 upon abide the event of this action.

The defendants to have twenty days from entry and service of this order to serve said bill of particulars.

STATE OF NEW YORK, }  
*Saratoga County Clerk's Office,* } ss. :

I, JAMES W. HORTON, Clerk of the said County of Saratoga, and Clerk of the Supreme Court of said State for said County, do certify that I have

compared the preceding copy with the original order entered and on file in my office, and that the same is a correct transcript therefrom and of the whole of said original.

In witness thereof, I have hereunto  
 subscribed my name and affixed my [L. S.] official seal this 20th day of October, 1880. 79

JAMES W. HORTON,  
*Clerk.*

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## SUPREME COURT.

PLACE OF TRIAL—CHENANGO COUNTY.

<p>ANNA N. DWIGHT, and others, as          Executrix and Executors of the          last Will, &amp;c., of WALTON          DWIGHT, deceased,    <i>against</i>            THE GERMANIA LIFE INSURANCE          COMPANY.</p>	{	<p><i>Bill of particulars furnished by the defendant.</i></p>	<p>80</p>
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In compliance with the order of the Special Term of this Court, bearing date the 21st day of October, 1879, as modified by the order of the General Term, bearing date the 4th day of May, 1880, the Germania 81  
 Life Insurance Company, the defendant above named, makes the following statement, that is to say :

*First.*—The said defendant expects to prove that the said Walton Dwight, the said plaintiffs' testator, had bronchitis and spitting of blood at various places, and at various times, between the year 1860 and the date of his death in 1878.

According to the best information defendant now has upon the subject, said maladies resulted from exposure several years prior to 1868, while the said Walton Dwight was engaged in prospecting for and examining timber lands, but at what precise time, defendant is unable to state, and manifested themselves at different dates during the period above specified, but at what particular times or places, defendant is unable to specify further than that in or about the year 1865, and again in or about the early part of the year 1870, the said Walton Dwight had bronchitis, accompanied by spitting of blood, but this defendant expects to be able to prove, upon the trial, that the said Walton Dwight, at various other times within the period first above mentioned, but which the defendant is unable now to specify, was afflicted with said maladies.

83 The sources of defendant's present information on this subject are limited to declarations and statements written and oral made by the said Walton Dwight in his lifetime, and prior to the application for the policy on which this action is founded, which declarations and statements do not specify the precise times and places when and where he had such bronchitis and spitting of blood, but are distinct and positive to the fact that he had had such bronchitis and spitting of blood prior to the date of said application.

84 *Second.*—The defendant expects to prove that at the time when the application for the policy on which this action is brought was made, the said Walton Dwight had made applications for insurance on his life, which had not led to an assurance to the following named companies, and at the dates set after their names respectively, that is to say :

To the Standard Life Insurance Company, on or about January 30, 1869. This application, which was for a policy on the whole life plan, was rejected



as to the policy applied for, but approved for no longer period than a seven year term.

To the "Connecticut Mutual Insurance Company," on or about July 31, 1878.

To the "John Hancock Insurance Company," on or about August 21, 1878.

To the "Penn Mutual Insurance Company," on or about August 20, 1878. 85

To the "Phoenix Mutual Insurance Company," on or about August 20, 1878.

To the Mutual Life Insurance Company of New-York, some time in the spring of 1868, about the month of March, defendant being unable to specify the date with more particularity.

To the Mutual Life Insurance Company of New-York again, on or shortly prior to August 14, 1878. The defendant is unable to give with more particularity the date of this application, which, as the defendant is informed and believes, was rejected by the said company on August 14, 1878. 86

To the Globe Mutual Life Insurance Company, on or shortly prior to August 20, 1878. The date of this application the defendant is unable to give with exactness, but, as the defendant is informed and believes, said application was rejected August 20, 1878.

SHIPMAN, BARLOW & LAROCQUE,  
*Attorneys for Defendant.*

*City and County of New-York, ss. :*

CORNELIUS DOREMUS, being duly sworn, says that he is the secretary of the Germania Life Insurance Company, the defendant named in the foregoing bill of particulars, and that said bill of particulars is true, as deponent verily believes. 87

C. DOREMUS.

Sworn before me this 15th }  
day of September, 1881. }

OTTO GUDEN,  
*Notary Public,*  
Kings Co.

Certificate filed in N. Y. Co.

SUPREME COURT,  
CHENANGO COUNTY.

88	ANNA N. DWIGHT and others, as Executrix and Executors of the last Will, &c., of WALTON DWIGHT, deceased, <p style="text-align: center;"><i>against</i></p> THE GERMANIA LIFE INSURANCE COMPANY.	} <i>Amended Bill of Particulars.</i>
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89 In compliance with the order of the Special Term of this Court, bearing date the 21st day of October, 1879, as modified by the order of the General Term, bearing date the 4th day of May, 1880, the Germania Life Insurance Company, the defendant above named makes and delivers the following statement, that is to say :

90 *First.*—The said defendant expects to prove that the said Walton Dwight had bronchitis and spitting of blood at various places and at various times, between the year 1860 and the date of his death in 1878. According to the best information defendant now has on the subject, said maladies resulted from exposure several years prior to 1868, while the said Walton Dwight was engaged in prospecting for and examining timber lands, but at what precise time defendant is unable to state, and that said maladies manifested themselves from time to time, at different dates during the period above specified ; but at what particular times or places defendant is unable to specify, except as hereinafter stated ; that in or about the year 1865 ; and again in the years 1866 and 1867 ; and again in or about the early part of the year 1870. the said Walton Dwight had bronchitis, accompanied by spitting of blood ; but at what precise dates or

places this defendant is unable now to specify further than that, during the latter part of the year 1866 and the early part of the year 1867, between the 1st day of December, 1866, and the 1st day of May in the year 1867, at Williamsport, in the State of Pennsylvania, the said Walton Dwight so had bronchitis, accompanied by spitting 91  
of blood and was seriously ill from those causes, but this defendant expects to be able to prove upon the trial that the said Walton Dwight at various other times within the period first above mentioned and at various places at which the said Dwight was from time to time sojourning, to wit: in the States of New-York, Pennsylvania, Georgia, Florida, Michigan and Illinois and also in the dominion of Canada, but at what precise places in said States respectively, or at what precise dates the defendant is unable now to specify was afflicted with said malady. The sources of defendant's 92  
present information on this subject with the exception of the said illness at Williamsport, Pennsylvania, hereinbefore specified, are limited to declarations and statements written and oral made by the said Dwight in his life time and prior to the application for the policy on which this action is founded, which declarations and statements do not specify the precise times and places when or where he had bronchitis and spitting of blood, but are distinct and positive to the fact that he had had such bronchitis and spitting of blood prior to the date of said application.

*Second.*—The defendant expects to prove that at 93  
the time when the application for the policy on which this action is brought was made, the said Walton Dwight had made applications for insurance on his life which had not led to an assurance, to the following named companies, and at the dates set after their names respectively, that is to say:

To the Standard Life Insurance Company, on or about January 30th, 1869. This application, which

was for a policy on the whole life plan was rejected as to the policy applied for, but approved for no longer period than a seven year term.

To the "Connecticut Mutual Insurance Company" on or about July 31st, 1878.

94 To the "John Hancock Insurance Company," on or about August 21st, 1878.

To the "Penn Mutual Insurance Company" on or about August 20th, 1878.

To the "Phœnix Mutual Insurance Company," on or about August 20th, 1878.

To the "Mutual Life Insurance Company of New-York," some time in the spring of 1868, about the month of March, defendant being unable to specify the date with more particularity.

95 To the "Mutual Life Insurance Company of New-York," again on or shortly prior to August 14th, 1878. The defendant is unable to give with more particularity the date of this application which, as the defendant is informed and believes, was rejected by the said company on August 14, 1878.

To the "Globe Mutual Life insurance Company," on or shortly prior to August 20th, 1878, the date of this application, the defendant is unable to give with exactness, but as the defendant is informed and believes, said application was rejected August 20th, 1878.

SHIPMAN, BARLOW & LAROCQUE,  
*Attorneys for Defendants.*

*City and County of New-York, ss.:*

96 CORNELIUS DOREMUS, being duly sworn, says, that he is the secretary of the Germania Life Insurance Company, the defendant named in the foregoing bill of particulars, and that said bill of particulars is true, as deponent verily believes.

C. DOREMUS.

Sworn before me this 11th }  
day of May, 1883. }

HENRY FROMME (89),  
*Notary Public,*  
New-York County.

STATE OF NEW-YORK. }  
*City and County of New-York.* } ss.:

I, PATRICK KEENAN, Clerk of the City and County of New-York, and also Clerk of the Supreme Court for the said city and county, the same being a Court of Record, do hereby certify, that Henry Fromme, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New-York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any Court in said State, and for general purposes; that his signature there-to is genuine, as I verily believe. 97

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 11th day of May, 1883.

PATRICK KEENAN,  
*Clerk.*

98

At a Special Term of the Supreme Court of the State of New-York, held at the Court House in the City of New-York, on the 10th day of January, 1881.

Present,—Hon. GEORGE C. BARRETT, *Justice.*

ANNA N. DWIGHT *et al.*, as Ex-  
 cutrix and Executors, &c., of  
 WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
 COMPANY.

99

On reading and filing consent to the entry of this



order, signed by Shipman, Barlow, Larocque & Macfarland, attorneys for the defendant, and on motion of Shipman, Barlow & Larocque, it is

Ordered, that said Shipman, Barlow & Larocque be and they are hereby substituted as attorneys for the defendant in the above entitled action.

100 Enter in Chenango County.

G. C. BARRETT,  
J. S. C.

We consent to the entry of the foregoing order.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND.

101 At a Circuit Court and Special Term  
of the Supreme Court, held in and  
for the County of Chenango, at the  
Court House, in the village of Nor-  
wich, N. Y., on the 12th day of  
November, 1883.

Present,—Hon. DAVID L. FOLLETT, *Justice*.

ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
as Executors, &c., of WALTON  
DWIGHT,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

*G.L. Sessions.*

*Shipman,  
Barlow &  
Larocque.*

102

JURORS :

William C. Austin,  
Charles Davis,  
John P. Newton,  
Lyman Loomis.  
Henry H. Smith,  
Reuben Miller,

Wells Watkins,  
Alanson T. Newton,  
Ira Phillips,  
Adin Brown,  
Jerome Dalton.  
Charles Billings.

Case opened by Henry Smith, Esq., and at 5¼ P. M. Court adjourned until 9 o'clock A. M. to-morrow.

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TUESDAY, Nov. 13.

Court opened pursuant to adjournment.

103

Plaintiffs' witnesses :

Peter D. Van Vradenburg,  
William B. Edwards,  
Charles A. Clark,

Mr. Larocque addressing the jury in opening.

12 o'clock, adjourned till 2 P. M.

Defendant's witnesses :

Edward R. Seccomb,  
Isaac F. Lloyd.

5 P. M., adjourned till 9 A. M. Wednesday.

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104

WEDNESDAY, 9 A. M.

Court met pursuant to adjournment.

Isaac F. Lloyd (resumed),  
Fayette P. Brown,  
Joseph Hillman.

12 M., recess till 2 P. M.

Lowell Harding,  
Robert M. Forsman,  
Peter Herdic,  
Charles Bartles, Jr.

5 P. M., Court adjourned to 9 A. M. Thursday.

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105

THURSDAY, Nov. 15th, 9 A. M.

Court opened pursuant to adjournment.

Owen J. Coughlin,  
Benjamin De Voe,  
John H. Armstrong.

12 M., recess until 2 P. M.

Charles F. Tupper,  
Charles W. Loomis.

5:10 P. M., adjourned to 9 A. M. Friday.

106

FRIDAY, Nov. 16, 9 A. M.

Court met pursuant to adjournment.

12 M., recess until 2 P. M.

Nat. B. Freeman,  
Levi C. Phillips.

9 P. M., adjourned to 9 A. M. Saturday.

SATURDAY, Nov. 17th, 9 A. M.

Court met pursuant to adjournment.

107

L. E. Rowe,  
Ruth B. Owens,  
Robert Brown,  
Norman W. Batchelder.

Adjourned until 2 P. M. on Monday.

MONDAY, Nov. 19, 2 P. M.

Court met pursuant to adjournment.

Norman W. Batchelder.

5 P. M., Court adjourned to 9 A. M., Tuesday.

108

TUESDAY, Nov. 20, 1883.

Defendant's witnesses :

Chas. H. Porter, M. D.

12 M. recess until 2 P. M.

John Swinburne, M. D.

5 P. M., adjourned to 9 A. M., Wednesday.

WEDNESDAY, NOV. 21, 9 A. M.

Court met pursuant to adjournment.

John Swinburne (re-called),	
Thomas W. Whitney,	
Peter K. Burhans,	109
Horatio C. Wood,	
Benjamin F. Sherman,	
Nat. B. Freeman (re-called),	
Elisha H. Bridges.	

4:40 P. M., Court adjourned till 9 A.M., Thursday.

THURSDAY, NOV. 22, 9 A. M.

Court met pursuant to adjournment.

James B. Pearson,	
Geo. W. Thompson,	110
Geo. W. Avery.	

11 A. M., recess until 2 P. M.

Chas. H. Porter,  
Austin Flint, Jr.,  
Dwight M. Lee,  
S. M. Hand,  
Geo. P. Haskell.

R. C. McNeil called, and proof of service of subpoena having been made, an order for attachment was made.

4 $\frac{3}{4}$ P. M., adjourned to 9 A. M., Friday.	111
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FRIDAY, Nov. 23, 1883, 9 A. M.

Court opened pursuant to adjournment.

Albert D. Hitchcock.

Plaintiffs' witnesses :

Peter D. Van Vradenburgh,  
Elias Ayres.

Recess until 2 P. M.

John Swinburne,  
Charles A. Hull,  
Francis W. Downs,  
Theodore F. McDonald.

112 5 P. M., adjourned to 9 A. M., Saturday.

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SATURDAY, NOV. 24, 1883, 9 A. M.

Court opened pursuant to adjournment.

Theo. F. McDonald,  
Neri Pine.

11 $\frac{3}{4}$  A. M., recess until 2 P. M.

Court met pursuant to adjournment.

Norman Dwight,  
Henry F. Reynolds.

113 3 $\frac{1}{2}$  P. M., adjourned to 10 A. M., Monday.

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MONDAY, NOV. 26, 1883.

Court opened pursuant to adjournment.

Jury called and all present.

Plaintiffs' witness :

Henry C. Hermans.

12 M., recess until 2 P. M.

2 P. M., Court met pursuant to adjournment.

Henry C. Hermans, continued.

114 5 $\frac{1}{4}$  P. M., adjourned until 9 A. M., Tuesday.

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TUESDAY, NOV. 27, 9 A. M.

Court met pursuant to adjournment.

Henry C. Hermans (re-called).  
Frederick Hyde,  
Dan. S. Burr.



12 M., recess until 2 P. M.

2 P. M.

Dan. S. Burr (re-called).

James D. Lee,

Joseph H. Chittenden.

5 P. M., adjourned until 9 A. M., Wednesday.

115

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WEDNESDAY, 9 A. M.

Court met pursuant to adjournment.

Joseph H. Chittenden,

John G. Orton.

12 M., recess until 3 P. M.

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WEDNESDAY, NOV. 28, 1883, 3 P. M.

116

Court met pursuant to adjournment.

John G. Orton (re-called).

Charles B. Richards.

4 $\frac{3}{4}$  P. M., adjourned until Monday, <sup>1</sup>Dec. 3, 1883,  
at 10 A. M.

— — — — —

MONDAY, Dec. 3, 1883, 10 A. M.

Court met pursuant to adjournment.

Bessie Macdonald,

Charles B. Richards (re-called).

117

11 $\frac{3}{4}$ , recess until 2 P. M.

2 P. M., Court met pursuant to adjournment.

Defendant's witnesses :

Clements Deutschler,

Harry Cornwell,

Frederick E. Ross.

3 $\frac{1}{2}$  P. M., adjourned until 9 A. M., Tuesday.

9 A. M. TUESDAY.

Court opened pursuant to adjournment.

118 Charles H. Porter,  
 Horatio C. Wood,  
 Benjamin F. Sherman,  
 John Swinburne,  
 Elisha H. Brydges,  
 George W. Avery.

2 P. M.

Court opened pursuant to adjournment.

Evidence declared closed.

5 P. M.

Adjourned to 9 A. M. Wednesday.

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 WEDNESDAY, Dec. 5th, 9 A. M.

119 Court met pursuant to adjournment.

Mr. Larocque arguing mo. for non suit.

12 M. Recess until 2 P. M.

Court convened at 2 P. M.

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 THURSDAY, Dec. 6th, 9 A. M.

Court opened pursuant to adjournment.

12 M. until 2 P. M.

2 P. M. Court opened pursuant to adjournment.

3½ P. M. Court adjourned to 9 A. M., Friday.

120

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 FRIDAY, Dec. 7th, 1883, 9 A. M.

Court opened pursuant to adjournment.

9¾ A. M. Mr. Russell commenced summing up the case on behalf of the defendants.

12 M. Recess until 2 P. M.

2 P. M. Opened pursuant to adjournment.

5 P. M. Adjourned to 9 A. M., on Saturday.

SATURDAY, Dec. 8th, 1883, 9 A. M.

Court opened pursuant to adjournment.

Mr. Russell continued his plea, closing at 11 A. M.

11½ A. M. Adjourned until 10 A. M., on Monday. 121

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MONDAY, Dec. 10, 1883, 10 A. M.

Court opened pursuant to adjournment.

Jury called and present at 10½ A. M., and Henry Smith, Esq., commenced his address in summing up the case for the plaintiffs.

Recess until 2 P. M.

Mr. Smith continuing.

5 P. M. Adjourned until 9 A. M., Tuesday.

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TUESDAY, Dec. 11, 9 A. M. 122

Court opened pursuant to adjournment.

Jury charged by Judge Follett, and at 11:20 A. M. retired in charge of two sworn constables.

Recess until 2 P. M.

5:20 P. M. Jury came into Court and having been addressed by the Court, again retired in charge of the constables to their room.

8¼ P. M. Adjourned to 9 A. M., Wednesday.

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WEDNESDAY, Dec. 12th. 123

9½ A. M. Court opened.

Jury called and had not agreed in their verdict. They were addressed by the Court and again retired for further deliberation.

Recess until 8 P. M.

Jury called and all present, One, Mr. Davis, somewhat ill, and by agreement, Dr. Brooks was to be called.

Adjourned until 10 A. M., Thursday.

THURSDAY, Dec. 13, 10 A. M.

Court opened pursuant to adjournment.

Jury called and had not agreed, and after being addressed by the Court again retired to their deliberations.

124 Recess until again called together.

3 P. M.

Court met pursuant to recess taken, and the jury, upon being duly called, said they had agreed on their verdict, and rendered the same as follows:

To question 1. Was the occupation of Walton Dwight for ten years preceding August 22, 1878, real estate and grain dealer, within the intent and meaning of the contract? They answered, Yes.

To question 2. Was Walton Dwight engaged in the sale of beer, wine or other intoxicating liquors, at any time within five years prior to August 22, 125 1878, within the intent and meaning of the contract? They answered, No.

To question 3. Was Walton Dwight connected with the sale of any beer, wine or other intoxicating liquors at any time within five years prior to August 22, 1878, within the intent and meaning of the contract? They answered, No.

To question 4. Had Walton Dwight at any time prior to August 22, 1878, had spitting of blood resulting from disease of the lungs or other respiratory organs? They answered, No.

To question 5. Was the ailment of Walton 126 Dwight at Williamsport, in March, 1867, a mere temporary ailment, from which he recovered? They answered, Yes.

To question 6. Was the policy of insurance on the life of Walton Dwight, in suit in this action, obtained by him with the preconceived design and intent to defraud the defendant? They answered, No.

To question 7. Did Walton Dwight die by suicide? They answered, No.

And also rendered a general verdict for the plaintiffs, and assessed their damages at \$18,743.27.

At request of Mr. Larocque the jury was polled on each of the questions, and also on the general verdict, and the same answers were given and the same verdict rendered. 127

Counsel for the defendant moved, upon the minutes of the Judge, to set aside the verdict of the jury and for a new trial, on the exceptions taken by the defendant, and on the ground that the verdict is contrary to evidence and contrary to law.

Whereupon the Court made the following order :

At a Circuit Court held at the Court House, in the village of Norwich and County of Chenango, on the thirteenth day of December, A. D. 1883. 128

Present,—The Hon. DAVID L. FOLLETT, *Justice*.

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ANNA N. DWIGHT and others,  
Executors, &c., of WALTON  
DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

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*Order Deny-  
ing Motion  
for New Trial*

129

A motion having been made before the Hon. David L. Follett, presiding at this Circuit Court, upon the minutes of said presiding Justice, to set aside the verdict of the jury this day rendered in favor of the plaintiffs in the above entitled action, and for a new trial upon the exceptions taken by the defendants, and on the grounds that the said

verdict is contrary to the evidence and contrary to law, after hearing Mr. Larocque, of counsel for the said defendant, and Isaac S. Newton, of counsel for plaintiffs, opposed,

130 It is ordered that the said motion be, and the same is hereby in all things denied.

Ordered, that the defendants have ninety days in which to make and serve a proposed case containing exceptions, and that the plaintiffs have like time to prepare and serve proposed amendments thereto, and that all proceedings upon the verdict be stayed until after the case and exceptions shall have been settled and filed, and ten days' notice thereof given.

131

SUPREME COURT,

CHENANGO COUNTY.

ANNA N. DWIGHT and others,  
Executors, &c., of WALTON  
DWIGHT, deceased,

*against*

132 THE GERMANIA LIFE INSURANCE  
COMPANY.

*Sirs.*—Please take notice that the defendant in the above entitled action appeals to the General Term of the Supreme Court from the order denying the said defendant's motion for a new trial, made and entered in this action at a Circuit Court held in the county of Chenango, and bearing date the



10th day of December, 1883, and from each and every part of the said order.

Dated New York, March 22d, 1884.

Yours, &c.,

SHIPMAN, BARLOW & LAROCQUE,  
*Defendant's Attorneys,* 133  
 35 William Street,  
 New York.

To G. L. SESSIONS, Esq.,  
*Plaintiffs' Attorney,*  
 A. SHEPARDSON, Esq.,  
*Clerk.*

At a Circuit Court and Special Term  
 of the Supreme Court appointed to  
 be held at the Court House at the 134  
 village of Norwich, in and for the  
 County of Chenango, on the twelfth  
 day of November, 1883.

Present,—Honorable DAVID L. FOLLETT,  
*Justice of the Supreme Court.*

ANNA N. DWIGHT, ORLOW W.  
 CHAPMAN and GEORGE F. LYON,  
 as Executrix and Executors of  
 the last Will and Testament of  
 WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
 COMPANY.

135

At the above term of Court, on the 13th day of

December, 1883, upon the rendering of a verdict in favor of the plaintiffs in this action upon that day, and against the Germania Life Insurance Company, the defendant, in the sum of eighteen thousand seven hundred and forty-three dollars and twenty-seven cents, a motion having been made for an extra allowance of costs in favor of the plaintiff in this action upon the ground that the same was a difficult and extraordinary case, and after hearing Isaac S. Newton, of counsel for the plaintiffs, in support of said motion, the attorneys of the defendant being present, it is ordered :

That the plaintiffs have an extra allowance of costs in this action, in the sum of nine hundred and thirty-seven dollars and sixteen cents, that being five per cent. upon the amount of the verdict.

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137 SUPREME COURT,  
CHENANGO COUNTY.

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ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
as Executrix and Executors of  
the last Will and Testament of  
WALTON DWIGHT, deceased,  
*Plaintiffs,*

*against*

138 THE GERMANIA LIFE INSURANCE  
COMPANY,  
*Defendant.*

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The issues in this action having been brought on for trial before Mr. Justice Follett and a jury, at a Circuit Court held in the village of Norwich in and

for the county of Chenango, commencing on the twelfth day of November, 1883, and a verdict for the plaintiffs having been rendered on the thirteenth day of December, 1883, for eighteen thousand seven hundred and forty-three dollars and twenty-seven cents; and the plaintiffs' costs having been duly adjusted at fourteen hundred and forty-seven dollars and twenty-four cents, 139

Now, on motion of G. L. Sessions, attorney for the plaintiffs, it is adjudged that the plaintiffs, Anna N. Dwight, Orlow W. Chapman and George F. Lyon, as executrix and executors of the last will and testament of Walton Dwight, deceased, recover of the defendant, the Germania Life Insurance Company, nineteen thousand two hundred and twenty-one dollars and twenty-two cents, being the amount of said verdict, and interest thereon from December 13, 1883, together with fourteen hundred and forty-seven dollars and twenty-four cents for their costs and disbursements, making in all twenty thousand six hundred and sixty-eight dollars and forty-six cents. 140

W. MERRIFIELD,

*Dep. Clerk.*

Entered May 23, 1884.

STATE OF NEW YORK, }  
*Chenango County Clerk's Office.* } ss.:

I, ANDREW SHEPARDSON, Clerk of said county, do hereby certify that I have compared the foregoing copy of a judgment roll with the original now remaining on file in this office, and that the same is a correct copy thereof, and of the whole of said original. 141

[SEAL] In testimony whereof, I have hereunto  
 set my hand and official seal, at Nor-  
 wich, this 27th day of May, 1884.

A. SHEPARDSON,  
*Clerk.*

## SUPREME COURT,

## CHENANGO COUNTY.

- 
- |     |   |   |              |
|-----|---|---|--------------|
| 142 | ANNA N. DWIGHT, ORLOW W.<br>CHAPMAN and GEORGE F. LYON,<br>as Executrix and Executors of<br>the last Will and Testament of<br>WALTON DWIGHT, deceased,<br><i>Respondents,</i> | } | <i>Case.</i> |
|     | <i>against</i>  |   |              |
|     | THE GERMANIA LIFE INSURANCE<br>COMPANY,<br><i>Appellants.</i>   |   |              |
- 

- 143 This action was commenced on the 30th day of April, 1879, by the service of a summons on the defendant. A copy of the complaint was served with the summons. The answer was served on the 15th day of July, 1879. The reply was served on the 21st day of August, 1879. The names of the original parties in full are as stated in the foregoing title; no change in the parties has taken place since the commencement of the action. The pleadings appear in the judgment roll hereto prefixed, and are therefore not repeated.

- 144 The issues raised by the pleadings came on to be tried before the Hon. David L. Follett, one of the Justices of the Supreme Court, and a jury, at a Circuit Court, held in and for the County of Chenango, at Norwich, in said county, on the 12th day of November, 1883.

The counsel for the plaintiffs, to maintain and prove the issues on their part, offered in evidence

the policy of insurance referred to in the complaint.

Objected to on the ground that the paper offered is only a part of the contract, as appears upon its face ; it refers to another paper (the application) as the basis upon which it is made and forming  
145  
a part of it.

The application referred to was produced, the defendants' counsel consenting that the policy and application might be admitted in evidence together, but objecting to the admission of the policy alone.

*Defendant's Counsel.*—We are willing to admit, and do admit, that the defendant executed the policy.

The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.  
146

The policy of insurance referred to was then read in evidence. It was marked Exhibit A, and is contained in the appendix with the other exhibits in the case.

The counsel for the plaintiffs, further to maintain and prove the said issues on their part, called as a witness

PETER VAN VREDENBURG, who, being duly sworn, testified as follows :

*Examined by Mr. Smith :*

147

I knew Walton Dwight ; he resided in Binghamton for many years—he is dead ; he died at the Spaulding House in Binghamton—I think in the fall of 1877 or 1878.

*Mr. Smith.*—I shall assume that this proof is *prima facie*, sufficient proof of his death, unless it is objected to now by the other side.

*The Court.*—I think it would certainly be proper to prove that he died before the commencement of this action.

*Mr. Smith.*—The complaint shows that it was commenced April 19th, 1879.

148 Counsel for the plaintiffs offered in evidence papers purporting to be proofs of death of Walton Dwight, and statement of the plaintiffs' claim against the defendants, both purporting to have been transmitted to the defendants January 16, 1879. They were received and read (marked Exhibit B).

Counsel for the plaintiffs also read in evidence two letters dated respectively November 26, 1878, and March 28, 1879, written by the secretary of the defendants (marked Exhibits C and D).

149

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WILLIAM B. EDWARDS, called as a witness on behalf of the plaintiffs and sworn, testified as follows :

*Examined by Mr. Smith :*

150 In the years 1878 and 1879 I was County Judge and Surrogate of the County of Broome. I held both offices because the County Judge is *ex officio* Surrogate. During that time we had no other special officer designated to perform the duties of this office, while the officer himself was disqualified. During that period Theodore F. McDonald was the District Attorney of our county. Tioga County was similarly situated in reference to the office of County Judge, except that I am not sure but they have a special officer there. Charles A. Clark was the County Judge and Surrogate there. A document was presented to me as Surrogate of the County of Broome, on which I was asked to take official action



relating to Walton Dwight. (Paper handed witness.) That is the document (Will of Walton Dwight marked "E" for identification—subsequently introduced in evidence as Exhibit 92). I took official action on that paper. (Paper handed witness.) My action is indicated by the paper I now hold (marked Exhibit F for identification). It is a copy of the decree that was made by me in that matter ; the original is in my pocket (produced). I had it entered of record in my office. 151

*Mr. Smith.*—I do not put these papers in evidence for they are matters of record.

*The Court.*—I think there will be no objection to your using copies.

District Attorney McDonald's wife was a sister of Col. Dwight at the time of the alleged death of Dwight, and at the time these papers were made. (Paper handed witness). I think this is the paper that was presented to me before, or a copy. 152

*Mr. Chapman.*—There were two originals.

*Witness.*—This is an original ; yes, sir. The date of that paper is December 6, 1878 ; the date of the other paper is the same.

*Cross-examination by Mr. Russell :*

I can't say that I am the same gentleman mentioned in the 20th clause of the will, but I am named in the will somewhere, in one of the clauses.

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153

CHARLES A. CLARK, called as a witness on behalf of the plaintiffs and sworn, testified as follows :

*Examined by Mr. Smith :*

During the years 1877 and 1878 I was County

Judge of Tioga County ; there came to me the designation by the Surrogate of the County of Broome, designating me as the officer to take the proof of the will of Col. Walton Dwight, deceased ; I have that paper in my hand ; I filed it in the Surrogate's office of Tioga County, and it has remained  
 154 ed there since, except I brought it here ; there were further proceedings there before me ; letters testamentary were delivered by me to Mr. Chapman, I think.

*The Court.*—The originals are all recorded ?

*Witness.*—They are.

*To Mr. Larocque.*—(Paper handed witness.) That is the paper that was presented to me as the Will, and upon which my action was based ; the place at which my official action taken in reference to this paper and these proceedings I have mentioned is Owego, Tioga County ; all I did was done  
 155 in that place.

*To Mr. Smith.*—I think I did also take official action in the county of Broome ; it had escaped my memory for the moment ; I issued these papers to which I have referred ; I think I went from Owego in Tioga County, to Binghamton, in Broome County ; my recollection now is that in Broome County on that same day I took official action. (Paper handed witness—the paper afterwards marked Exhibit “G,” being letters testamentary, issued in Broome County.) That paper bears on the subject ; it is the letters testamentary ; it seems  
 156 I signed them ; I issued them in Broome County, at Binghamton ; they bear date the 30th day of December, 1878 ; that was the date I signed it ; I didn't put the yellow spot on ; that is the certificate of the Clerk of Broome County.

*Cross-examination by Mr. Russell :*

‘ I took proofs of the will first in Broome County,

and then I reduplicated the same proof in Tioga County ; it was done in both counties on the same day ; I took the same proofs in Broome County that I had done in Tioga County. The witnesses were sworn in Broome County, I think ; that is my recollection ; I signed the entries of adjudication in Broome County ; they were made in the Surrogate's office in Broome County, by Judge Edwards or his clerk ; my recollection is they were made by the Clerk. Judge Edwards was present ; I don't know that he assisted me ; I think not ; I couldn't be positive about his making any of the entries ; my recollection is that the Clerk made the entries. Judge Edwards was not sitting as a part of the Court there in Broome County. The Clerk of the Surrogate's Court of Broome County made the entries ; he didn't sign the letters testamentary ; this is my name to it as the officer ; I think there was no signature of myself or of any officer whatever to it in Broome County at the close of the proceedings for the probate. I think I signed the letters and signed the record of the will and the orders ; I think the witnesses to the will signed two distinct sets of proofs ; I left the proofs that were taken in Broome County in the Surrogate's office in Broome County, and I kept those that were taken in Tioga County in my office.

Q. Prior to going to Broome County had you signed any paper purporting to be letters testamentary ? A. Well, as to the order—they were both done the same day. I don't remember which was done first.

Q. I understood you to say that the proofs were taken in Tioga County first ? A. Well, I wouldn't be positive as to that. They were both taken the same day.

Q. Don't you know which place you held Court in first—in Tioga or Broome County ? A. My impression would be now that the proofs were taken in Broome County first.

Q. Does that impression amount to a recollection? A. I think so.

Q. And the witnesses signed the proofs? A. I think so.

Q. And you signed letters testamentary there?

160 A. That is my best recollection upon it.

Q. After you had signed, and, as you supposed, completed your official acts in Broome County, you proceeded to Tioga County and took the proofs again? A. Yes; they were taken in Tioga County the same day. The witnesses again signed the proofs there; they were a separate set of proofs; and I then signed another paper purporting to be letters testamentary.

Q. What was the first paper called that was presented to you in the matter of the probate of this will? A. I think I haven't it; I think some of these gentlemen have taken it from me; I think we called it a designation, though.

161 Q. (Exhibit E handed witness,) Is this paper the first paper presented to you? A. I think so; I think at the same time other papers were presented, but this was the first one.

[Paper described as a certificate of disqualification addressed to the witness.]

Q. (Another paper handed witness, being the original of which Exhibit "F for Identification" is a copy.) Was that paper presented to you? A. I have no evidence that this paper was ever presented to me; I don't think it was. (Paper was dated December 6, signed W. B. Edwards, County Judge and Surrogate of Broome County.) I don't think I ever saw it.

162 Q. What was the first official act you did after this certificate of disqualification was presented to you? A. I filed the petition for the proof of the will and issued citations.

Q. Was there more than one petition presented

to you? A. There were two ; I issued citations in both counties, and there is an official record of my action in both counties kept by the Clerk of the Surrogate's Court of each county.

The counsel for the plaintiffs then read in evidence a certified copy of the order made by Judge Edwards showing his disqualification, an original of which was filed in the Surrogate's office of Tioga County, December 18th, 1878, and in Broome County, December 18th, 1878. 163

It was marked "E."

Letters testamentary granted by Judge Clark to the plaintiffs in Tioga County were then offered in evidence.

Objected to on the ground that no jurisdiction on the part of the Magistrate who signed those letters has been shown. 164  
The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

They were read (marked Exhibit F).

Also letters testamentary issued to the plaintiff by Judge Clark, in Broome County, dated December 30, 1878.

Same objection, ruling and exception.

They were read (marked Exhibit G). 165

The plaintiffs here rested, reserving right to prove computation of interest.

The counsel for the defendants thereupon moved the Court to dismiss the complaint on the ground that no jurisdiction is shown to issue the letters testamentary and the plaintiffs are not proven to be parties interested.

166 *Mr. Smith.*—If there is any defect in that regard we would like to have it pointed out so we can supply it.

The Court denied the motion, to which ruling the counsel for the defendants duly excepted.

The counsel for the defendants, to maintain and prove the said issues on their part, called as a witness :

167 EDWARD R. SECCOMB who, being duly sworn, testified as follows :

*Examined by Mr. Larocque :*

168 I reside in West Newton, Massachusetts ; my age is 67 years ; I have retired from business ; I was in Binghamton on the evening of March 28, 1876, and also the next day. It has been my habit to keep some memorandum of my transactions from day to day ; that enables me to fix the date when I was there. I went there to look after some mortgages. I stayed at the Dwight House. I had never been in Binghamton before. I made the acquaintance of Colonel Dwight at that time. I had never seen him before, nor had I ever heard of him before. On that occasion I remained at the Dwight House two <sup>and</sup> days ; I saw but very few guests there at the time. While there I sat at the same table with Colonel Dwight and his wife. He was at the head of the table, and I sat on one side. I had a conversation with Colonel Dwight in the office of the hotel in the evening of one of the days which I have mentioned. I am not able to say



now which day it was, but I think it was the evening of the 28th of March, 1876. I think I returned the next day. We might have talked an hour or an hour and a half in the office. We were sitting there in the office. During the conversation only one person was present; he came in a short time and went out. No one else took part in my conversation with Colonel Dwight. The general subject of the conversation was the beauty of the place; we also referred to business; he said he held a great deal of unimproved property and it was embarrassing him; I told him he had years and health on his side, and need not be discouraged; he replied that he had had a severe hemorrhage of the lungs in years past, or at some time. 169

*Cross-examination by Mr. Smith :*

When I last had an occupation I was in commercial business; I had vessels running from New-York, and also from Boston to different parts of the world; I was part owner of some vessels, and had charge of the business of some, but that is years ago; the last business I did was to look after the loans and mortgages for an insurance company; I was an employee of an insurance company for a time; that is not the last business I have had; I had other business; that was the last business you would call a stated, regular business; we have a private business, and we are under the control of nobody; I made an arrangement to look after some mortgages in the West; I was an agent, if you please; I was employed to attend to it; I was looking after specific business; nothing to do with the insurance business, but looking after the mortgages; the company was the Union Mutual, that business continued two years or two and a half, and with this company alone; I was on the business of that company at Binghamton at the time I had this conversation. 170 171

Prior to my engagement with the Union Mutual Society I was living in New York City; I owned vessels running to the Mediterranean Sea; I owned a portion of the bark Union; I owned half of it probably; if I had my books here I could tell  
 172 whether I owned half of it, or the whole of it; I can't tell from memory; there are a good many things I can't remember; a good many things I have heard, I have forgotten; I mean to say I can't tell what share I owned in that ship; I was interested in another ship; it has been my business for several years, but I have not been in business for several years; I retired some years ago; I could go to my books and refresh my memory; I don't carry it all in my head, or mind; I don't know what is the reason; it is because I can't remember; by looking at my books I  
 173 can tell how many ships I ever had an interest in; I can't remember, and I write down almost everything I want to remember in my memorandum book. When I went to the Dwight House at Binghamton it was my first visit there; I was written to, to take a mortgage on some farms out here, and I came out to investigate it; I was looking about, making investments on a mortgage, and while at Dwight's house I fell into conversation with him or he with me; I had never seen him before and have never seen him since; I didn't make any memorandum of the conversation, but I did of the date I was there; I do not remember that conversation  
 174 any better than I do the conversation I have had with you to-day, but I remember it as well; I can give a reason why I should remember that conversation better than any other conversation I ever had with a man; I cannot give any reason why I remember what that man said about his health better than I remember what any other man said in speaking of his health; I have talked with various other men with reference to their health; often with the ladies; I do not always remember it.

Q. You say you can't give any reason for remembering one better than another? A. I remember this.

Q. Can you give any reason why you remember what Mr. Dwight, a stranger, said about his health, better than your conversation on the same subject, with any other person? A. I remember it because I was interested in it; I did not have any pecuniary interest in his condition, nor any business interests, nor any spiritual interest, and yet I was interested in what he told me. There was something in the interest I had that bore on the question as to what kind of spitting of blood he had. I was interested on that subject; as to whether it came from the nose, or gums or somewhere else; I was interested on that particular subject; that was not a matter that Dwight was interested in,—the interest I took; I don't know that there was anybody interested in it. I don't know that there was any body excepting myself interested in that reason; that is not any greater interest than I had in other people under the same circumstances; I had the same with other people; that was on March 28, 1876. I did not know of Dwight's life insurance, or his business then. 175

Q. And do you think you remember since 1876, I mean remember so as to be sure that he used the word lungs? A. Yes; that very word. I remember all these years that that particular word was used. I am as positive of it as that I am alive. 176

Q. Did you ever hear anybody else use the word lungs? A. I can't say. 177

Q. Can you remember one? A. Yes; I can remember a good many, but I can't say how many.

Q. Get at it as near as you can? A. I shouldn't attempt to get at it. If you ask why I took an interest in it I will explain it. I am not interested in this case at all.

Q. State as many in number, of the persons you can now testify with confidence that you have

heard speak of their lungs? A. It is impossible. I shall not attempt it. I can give a number; if you want me to specify a number, I will say fifty.

Q. State the number you now remember? A. I can't do it.

178 Q. Can't you state the number you do remember? A. Well, ten.

Q. And those persons spread over how many years? A. Thirty-five years.

Q. Well, take the thirty-five years ago; who was that? A. In my own family and among my friends.

Q. The one thirty-five years ago that you remember speaking of his lung? A. My family and my business friends; when I had this terrible hemorrhage myself; they wanted to know about it, and I was interested in people's lungs.

Q. Name the person the most remote? A. I don't know the names. Hold on—I will let the truth out.

Q. You will? A. Yes, sir; I will. If a person has a hemorrhage, I want to know.

Q. Name the person the most remote in date, the longest ago, that you now remember having spoken of bleeding at the lungs? A. Dr. Fisher; he lived in Boston; he is dead. I can't mention the name of one who is alive, but I know I have talked with a great many people on that subject. I think I communicated these things first to the president of our company, John DeWitt; the name of the company is the Union Mutual Life Insurance Company. I can't give the date. I don't think I spoke of it until after I heard of the death of Mr. Dwight; it might have been four or five years ago; I stated it, probably, to some of the directors of the company, or to the agents of the Union Mutual Company; I don't remember any one else except the parties here. I came here as a witness without being subpoenaed; I knew I was not bound to come; I came voluntarily; there has been no bargain made with me; I

was asked to come by the gentleman from New-York. I was notified by the President of the United States Company, Mr. Brosnan, that the case was coming up; I was asked to come last spring when the trial was coming on; I think four or five months ago, or along in the summer. I presume Mr. Brosnan knew all that I knew about this case then. I 181  
 was notified that the case had been put over, and did not come; I came part way. I don't know that before that any of these people knew what I could testify to. I don't remember that I had disclosed this to the New-York people before this; I presume that Mr. Brosnan opened the interview with me. I am not able to speak from memory; they said the expenses would be paid; there was nothing more said; he wanted me to come, and my expenses would be paid—that was what he said, and I agreed to come, if I was able; I came here last night. I talked 182  
 with no one else that day in Binghamton, but the party that sent for me to come and look at the property; I have forgotten the name, I have it in my book; there is not a word of this Dwight business in the book; I have none of the conversation in the book—not a word; I have entries in reference to this mortgage I was looking after; the book is for dates and expenses; I can't remember much of the conversation with the other man in regard to the mortgage. The last sick man I have seen is my brother, B. Osgood Pierce; I had a conversation with him two weeks or a week ago; I cannot remember the conversation; I 183  
 don't remember every word of any conversation; I don't pretend to; things may be said and forgotten.

Q. And things may be stated by mistake? A. My memory is poor and I don't remember things; my memory is not as good as it was; I said that I couldn't remember everything I heard; I don't remember what I said about my memory; I



said it was poor, very likely; if I didn't, I will say it; I said so before.

This conversation in the Dwight House was in the office; I boarded there that day; I put up at the house and paid for my two days' board; he (Dwight) had a leisure hour and we sat down in the office and talked and chatted a little for an hour or an hour and a half; he told me about his business, but not much, and he told me about his health. I looked him over in one respect, in regard to his hemorrhage; I looked that over somewhat to see if his symptoms were like mine; and I asked him questions; I did not see any symptoms; I saw a great big fellow; he was a large man; he looked well; I noticed that he was a man of unusual size and development; I thought he was a healthy, sound man; my impression at the time was that he was a healthy, fine-looking man; I do not remember that he had a full chest, bigger than yours [referring to counsel]; I was more interested in the lungs; I don't remember about his voice; I can't tell whether he had a full voice, as well as what he said; we were talking in a mild way in his office; the main thing my memory was on was bleeding; I wanted to see if his symptoms were similar to mine; I am sixty-seven years old, and weigh two hundred pounds; this subject of symptoms has been on my mind for thirty-five years. The conversation opened upon the subject of Binghamton; he thought it was a handsome place; I think he put it up a little, the prettiest place in the world; he talked high figures; he told stories; I don't remember that he compared it with Norwich or with Elmira; I told him I thought it was a handsome place, and he said he had embarrassed himself in making it so; he did not tell me he had built a town down there; he told me that he had built the block we were in; three or four houses put in one, I understood him, for his hotel; my impression is that it was three or four houses made into a hotel; I was outside, and



saw them inside ; I was in the one I slept in and  
 dined in ; I think there were three or four ; that is  
 my best memory ; they looked very well, but nothing  
 very elegant ; they were a good style of houses,  
 and built with separate doors, and like separate  
 houses, but I believe they were connected inside ;  
 he told me they were connected inside ; I don't 187  
 know ; I didn't go through them ; I was in my  
 sleeping room, and I went down stairs to dine ; I  
 don't know anything about the formation of the  
 houses ; I remember that there was a dining  
 room ; I can't remember which floor it was  
 on ; I think it was in the basement ; I  
 can't remember ; I cannot tell whether the dining  
 apartment occupied more than one room ; I think  
 it did ; I can't remember. Dwight commenced the  
 conversation about what he had done ; he said he  
 had expended a good deal of money in the town ;  
 he didn't tell me how much ; the amount was not 188  
 mentioned ; I don't remember distinctly those cot-  
 tages around there ; I cannot tell whether they were  
 there or not ; I believe there is a river down there,  
 but I do not remember ; I think there is ; I have  
 not much memory about it at all ; I don't know  
 what the name of the river is ; I don't know that I  
 ever knew ; I think if there is one there it is not  
 very near the house, but quite a distance off. I  
 think there was a public park there, at the back  
 side of the house ; I don't remember to have noticed  
 a park on the front side ; I think there was one on the  
 back side, because it looked a little singular to me.  
 I never heard of the Dickinson Orchard, or Dickinson 189  
 Park, or Dickinson House ; don't know that I  
 ever heard of such an old gentleman as Daniel S.  
 Dickinson ; I don't know anything about whether  
 he ever lived or not ; I should think that Dwight  
 and I were together about an hour ; the talk was  
 not very rapid ; just about an hour's talk ; some-  
 times somebody broke in ; my talk would be very  
 short in regard to it. I will give you what I can

remember. When he told me he had expended a great deal of money and the times had gone hard with him, and that his credit was impaired, &c., my remark to him was that he had years and health on his side, and not to be discouraged. He then said to me : “ Well, I have had hemorrhage of the  
 190 lungs,” and I asked him where he thought it came from, whether from the lungs, or from the breaking of a blood vessel, or from his stomach, and he told me it came from his lungs ; that he had had a pretty serious trouble with them, and that was the drift of the conversation. I have got through now ; I have told you all I can remember.

Q. If he said he had bleeding from the lungs, why did you ask where it came from ? A. Some people think it comes from some where else, and I asked him if he was sure it came from his lungs.

Q. Why didn't you tell that in the first place ?

191 A. Because I can't tell everything at once.

Q. You asked him if he were sure it came from the lungs ? A. Yes, sir ; I asked him if he thought it came from the lungs ; I am not sure whether I put the word “ sure ” in or not ; I told you I said it ; I do not want to take it out ; I will leave it there ; I asked him if he was sure it came from the lungs ; that is the question I generally ask everybody.

Q. Why did you change it and say you couldn't tell whether it was used or not ? A. It is probably unnecessary to change it ; no reason in particular ; no particular reason for changing it.

192 Q. Which is the truth, the word “ sure ” in or out—didn't you ask him because some people have spitting from the lungs and some from the breaking of blood vessels ? Are you sure you had it in or out ? A. I think I had it in.

*Re-direct-examination by Mr. Larocque :*

Q. You were asked by the counsel on the other side a number of times, and in a number of dif-

ferent forms, whether you had any reason for remembering this conversation about the hemorrhage of the lungs, but you were not permitted to state what your reason was and why you took an interest in it? A. I had a severe attack myself for weeks, and was not able to move from the bed or speak, and after I recovered from it I never got over the sensation, and I have not to this day; and then my son was taken at the same time or age in life that I was, and of course it has been in the family, and he is a young man comparatively, and I am sensitive upon that subject; and I don't think I have ever met a person that had had hemorrhage of the lungs that I did not question upon that subject in order to know the details of it; I did it for my own gratification; it is thirty-five years ago, and I have never got over the sensation I had at that time. 193

*Re-cross-examination by Mr. Smith:*

I had my last bleeding in 1848. I haven't bled since. That was operating on my mind when I talked with Dwight. It operates upon my mind to-day. Anybody that had such a siege as I had would never forget it. I can't tell who was the last man before Dwight that I talked with about bleeding; it don't operate on my mind as well as when talking with Dwight, because everybody don't have the experience I had. My son, Edward A., had the hemorrhage—that is the only son I have; he lives in New York and is in business there at 68 Broadway; the firm is Brown & Seccomb. I think it is about ten years since he has had bleeding, to my knowledge. 194 195

I am Director in the Union Mutual Life Insurance Company in Portland. I have not been on a salary for years. I go down once a month. I was a director when the company first started many years ago, for three or four years, and then I removed to New-York and resigned, and then I returned to

Boston about eleven years ago and went in as a director again, which office I have held for about nine years now.

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- 196     ISAAC F. LLOYD, called as a witness in behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

- I reside in the city of New York ; I am secretary of the Mutual Life Insurance Company of New-York. I couldn't state that that company is ordinarily known as the New-York Mutual ; I have heard it spoken of as the " New-York Mutual." There is a Connecticut Mutual, and a Massachusetts Mutual ; I suppose that that company is often spoken of outside as the New-York Mutual, to distinguish it from those companies spoken of, but I  
197     couldn't swear that it is ordinarily spoken of as the New-York Mutual. There is no company that I know of besides that, that is called the New-York Mutual. I have been connected with the Mutual Life Insurance Company of New-York in the capacity of secretary, about eight years.

I produce from the records of the company an application to the Mutual Life Insurance Company of New-York, for an insurance policy on the life of Walton Dwight. (Paper handed witness.) This is the original application.

- 198                     The signature to the application was conceded to be in Walton Dwight's handwriting.

The application referred to was then read in evidence. It was marked Exhibit No. 1.

Q. In answer to the question as to the amount of insurance applied for and the kind of policy, you

will observe that the word "ten" appears to be written over "twenty-five," and that "fifteen year life" appears to have been substituted for "plain life"; can you explain that? A. The application as received at the office of the company was originally for twenty-five thousand dollars and plain life insurance. The amount which the medical examiners—— the application was not approved for twenty-five thousand dollars for plain life. The corporation issued the policy—that policy has been destroyed; it was destroyed about six months ago; that policy was never delivered to Mr. Dwight to my knowledge; it was delivered to the general agent of the company, Mr. Fayette P. Brown; he was one of the general agents of the Mutual Life Insurance Company; his territory includes Broome County; my company received back the policy from Brown; the general agent was ordered to return the policy both by letter and telegram; the policy had been cancelled; no premium had been received upon that policy. In pursuance of the call which I made upon the general agent, the policy was returned to the office by the agent; it was there destroyed, together with a great many other policies, about six months ago. I have the press letter book in which our correspondence in regard to this policy was had. (Referring to same.) There is copy letter of 19th of August, 1878, sent to Mr. Brown, enclosing the policy; the next communication to Mr. Brown, of which I find a copy, is telegram of 27th August, 1878; the next is a letter which bears the same date; there is another bearing date of September 9th; that is the last. The telegram referred to was written and signed by me, and the letters were signed by myself.

Q. Do you know who represented Mr. Brown, if any one, at Binghamton, at that time? A. No, sir. I am able to give the exact date when the policy in question was destroyed; it was the 20th



of March, 1883; the Mutual Life Insurance Company keeps a book of records as to the issue and disposition of each policy which goes from the office. It is a policy register, and the size, I should say, about 24x30 inches, and about 4 to 5 inches thick; that is a book to which constant reference is made in the course of business in the office; I have made a copy of so much of the entries in the book as relates to any transactions with Walton Dwight or on which his name appears; I now produce the copy so made; that is an exact copy of the entries on that book so far as they relate to this application, or this policy or to any business of Walton Dwight.

Q. "Number 192,196, August 19th, Walton Dwight, Windsor, N. Y., dealer in grain, etc., son Frank." In the next column, "New-York, December 20th, 1837," next column, "41," and the next column "life." The next column "15 years February 10th, 1893." The next column "ten thousand dollars," next column "\$274.90," and the next column "S," and the next column "1," and the next column "Yonkers." Tell me what the date in the first column, August 19th means? A. The date of the policy; "the name, address, business" and words "son Frank" in second column represent the name, residence and business of the insured, and the interest and the relationship of the person in whose behalf the policy is made. And in the next column, New-York, December 20th, 1837, that represents the date of his birth; and the figures "41" represent the age of the insured. The time the policy was issued—and the word "life" in the next column, indicates the kind of policy; the words, "fifteen years, February, 19, 1893," in the next column, mean that the policy was issued on the fifteen year payment plan,—that the policy would be paid up in fifteen annual payments, and the last payment would fall due on the 19th of February, 1893; the figures in the next



column indicate the amount of insurance ; the figures, "\$274.90," in the next column, mean that that is the amount of premium to be paid semi-annually ; the letter "S" in the next column indicates that the premium is payable semi-annually ; the figure "1" in the next column is the policy fee charged on the policy when issued to anybody ; 205 the word "Yonkers" signifies the headquarters of the General Agent through whom the policy was issued.

There was no other application for any policy of insurance on the life of Walton Dwight pending with the Mutual Life Insurance Company of New York during the summer of 1878 ; there was no other policy on the life of Walton Dwight, which had ever been signed by the officers of the company, in existence at that time. In the distribution of the business of the Mutual Life Insurance Company of New York, the district in which Broome county was contained, was in charge of Fayette P. Brown ; I am unable to fix the date of his appointment, which was ten years ago at least ; he is agent still. 206

*Cross-examination by Mr. Newton :*

Our company has been in existence about 40 years ; it has issued about 246,000 policies ; the company has issued from ten to twelve thousand policies during the eight years that I have been secretary, I should say. I think the policy which I signed was the first paper presented to me in connection with this application ; I have no recollection of seeing this application until after the policy was signed. 207

Q. (Application handed witness.) Your attention was called to the answer to the third question ; what was the amount originally applied for as written in that application ? A. The amount originally applied for was \$25,000, plain life policy.

Q. It is altered, is it not? A. Yes; I do not know in whose handwriting that alteration is; the amount is changed from \$25,000 to \$10,000, and the word "plain" in "plain life" is taken out, and "fifteen year" put in its place. I do not know when the alteration was made; I would not testify  
 208 as to how that application was made as to figures when it came to my office—whether twenty-five thousand or ten thousand; my first knowledge on the subject was on the signing of the policy; there is a letter of Mr. Dwight's attached to that application; I first saw that letter when I was subpoenaed last spring to attend this trial—when I got out the application; it was at that time attached to the application; I do not know who attached the letter to the application, nor when the letter was attached to it. I have no means of knowledge whether it was  
 209 thus attached at the time that this policy was issued by the company. I sent for the application to the record room, where all the applications are kept, and being brought to me at that time, it had this letter attached.

Q. (Paper handed witness.) I show you the indorsement upon the application at the head—"Twenty-five thousand dollars, life, Walton Dwight," in whose handwriting is that? A. I do not know; it is not the handwriting of any person connected with the home office.

Q. I observe, "Number of policy 192,196"; where was that indorsed? A. By the Policy Clerk, in the office of the company in New York.

210 Q. I notice, "Kind of policy, life"; who made that entry of the word "life"? A. The same clerk who made this other, Charles H. Palmer; he is still in the employ of the company; he is not here; that upper figure, "25,000," is not in his handwriting; the "10,000" and all the writing on the back, except those letters, "J. C.," are in Palmer's handwriting. The printing upon the indorsement of that application was all there before it was brought to my

office; we issue applications with the printing on the back as there. Those words near the top are "not approved," "fifteen year life full limit"; those two first words were put there by the medical examiners; one of the medical examiners put the "fifteen year life" there; I couldn't testify as to who scratched it out; at the left are the initials of 211 one of the medical examiners; I don't know who scratched that out; near the right are three initials—the letters "W. R. G."; I know that Dr. Walter R. Gillette wrote those; I don't know who scratched it out; that "fifteen year life" was put down there after this came into the hands of the company. I testified that no premium on this policy was ever paid to the company; no premium was ever received by the company on that policy.

Q. Do you know, of your own knowledge, anything about that? A. I know from a personal examination of the books of the company.

Q. You don't know of your own knowledge then at all, do you, what premium has been paid? 212

A. I don't know as I can give any other answer to that question.

Q. Of your own knowledge, I say, you don't know, do you? A. No.

Q. Do you remember from your memory the signing of the Dwight Policy? A. No, sir.

Q. Do you know when that policy was returned, if ever, to the office? A. I have been unable to fix the date of the return of the policy; I have no recollection of having seen it; I did not destroy it; I don't know whether I received it or not; I have no recollection of it; I have no recollection of having seen the policy since I signed it; I suppose that I signed the policy after it was filled up, for the reason that I signed; I don't know that I did; I do not know from any means whether that policy reached my office, if returned, before the first of November, 1878. In 213

issuing a policy we require a medical examiner's report invariably, as part of the application.

114 Q. There are two reports, I see, one small one, pasted on, and a larger one, a part of this sheet, by Jackson, as medical examiner; were those reports part of the application? A. Yes, and upon that and after the examination the action was taken that was endorsed upon that application.

Q. The endorsement, "not approved," on the upper portion of the body of the application; did that refer to the application as made for \$25,000?

A. No; that endorsement was made by the medical examiner of the company; it was not approved medically.

Q. And yet it was approved in a different form right under it? A. Yes; it had been approved for \$10,000, fifteen year life policy, and not approved for \$25,000.

215 Q. I notice an entry at the left of Exhibit 2 (for Identification), in writing; read it? A. "Cancelled Aug. 20, 1878"; I found that upon the record; the action that resulted in placing that entry on the record, was taken on the 27th day of August, 1878; I can't testify to the exact date when the entry was made; I can't say that any such entry was made when that policy was absent from our office; I don't know where that policy was between the 19th day of August and the 1st day of November, 1878; the entry upon that record in red ink, "Aug. 20, 1878" was made by a clerk in the office of the company, Oscar Johnson;

216 he is at New-York, and in the employ of the company, as he was then; the reason for putting it August 20, was that it is the practice of the company to make the date of cancellation the day succeeding the day on which the premium falls due and is unpaid; and that without regard to the time when the cancellation is ordered.

Q. On the 11th day of September, 1878, was that policy in the hands of the company? A. I don't

know. The letter that was read, was the 9th ; it had not been returned to the company on the 9th of September ; Mr. Brown resides at Yonkers ; that is about 20 miles from the office of the company, and about one hour's distance of time.

Q. You stated there was no other policy. Have you looked at the names to see, in this big book ? 217

A. I looked over the alphabetical register and made as good an examination as possible.

Q. The alphabetical register is of what ? A. Of those insured in that company.

Q. You don't pretend to know the amount insured, or the persons insured in your company ?

A. No ; I can't carry that in my mind ; I simply testify to it from that ; I look in the alphabetical list and don't find his name ; that is the examination I made ; that is all the means of knowledge I have ; I have no other means of knowledge than that ; that would be the only means possible. 219

Q. Have you any other means of knowledge besides that, or any other knowledge besides that ?

A. No, sir ; of course you refer to any policy in force or that had been issued by the company ?

Q. Yes. Whether you had knowledge of it ?

A. No, sir ; no knowledge, except what I have stated.

The counsel for the plaintiffs here read in evidence the medical examiner's two reports that accompanied this application. They were marked Exhibit 2. 219

*Re-direct-examination by Mr. Larocque :*

Q. Refer to the press letter book you had in your hand yesterday ; are you able to say whether or not you personally took part in the proceedings relating to this application ? I want you to refresh your memory and say if you took part in anything



relating to this policy ? A. I wrote the telegram.

Q. Are you able, by the letters which you signed and the telegram which you wrote, to say whether or not now, as matter of recollection, you personally took part in the transactions of the Mutual Life Insurance Company in relation to this application and policy ? A. I directed the general agent to return the policy to the company ; I now recollect what I did about it ; I remember directing the return of the policy and of writing the telegram.

*Re-cross-examination by Mr. Newton ;*

Q. That is the telegram of August 27th ? A. Yes.

Q. Is that telegram what you mean by saying you directed the return ? A. That and the letters which were written subsequently and signed by me ; the corresponding clerk wrote them and I signed them ; I read them.

221 Q. Do you remember it ? A. I read every letter I sign ; I cannot remember it to this day ; I do remember writing the letter—recalling it—the telegram and letter, independent of that book ; I don't remember it was that date ; that telegram was to Mr. Brown.

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FAYETTE P. BROWN, called as a witness for the defendants, and sworn, testified as follows :

222 *Examined by Mr. Larocque :*

I reside at Yonkers ; my business is that of general agent for the Mutual Life Insurance Company of New-York, for the State of Vermont and a portion of the State of New-York, including the county of Broome ; I have been connected with the company about 18 years ; my appointment for this district is dated the first of March, 1869.



Q. In the year 1878 with whom did you transact business relating to the life insurance business of the Mutual Life Insurance Company in Binghamton, if anybody? A. Directly with Mr. D. C. Vosbury, my agent; he is dead now; I do not know when he died; I am acquainted with Mr. Vosbury's handwriting. 223

Q. (Book handed witness.) Look at that book, and tell me if that is in Mr. Vosbury's handwriting or not? A. Well, I am in doubt; I could not answer it; I think it is, however; to the best of my knowledge that is in the handwriting of Mr. Vosbury; I was corresponding with him and familiar with his handwriting; I received an application for insurance on the life of Walton Dwight in the year 1878.

Q. (Paper handed witness.) Look at the paper shown you, Exhibit "1," and say whether or not that is the application which you received? A. It is. 224

Q. Examine the papers, and see what papers, if any, were attached to the blank form of application at the time it first came to your hands; examine it carefully so as to say positively? A. I should say not either of them; the application came without any of those attached to it; no papers were attached to it; none of the letters or telegrams that are now fastened to it; that application first came to my hands when I received it on the 8th day of August, 1878, from Mr. Vosbury; we made the proper entries on my book, and sent it to the Mutual Life Insurance Company of New-York; I didn't make the entries, but they were made. 225

Q. Now look at the application again, and tell me if, when you sent it to the company, the amount of insurance applied for was stated as twenty-five thousand dollars or ten thousand dollars? A. It was for twenty-five thousand dollars.

Q. And how was the kind of policy stated on the face of the application? A. Plain life.

Q. And these words "ten thousand" written over twenty-five thousand, they were not in existence at that time? A. No, and in the same way the words "fifteen years" did not appear in the application at that time. The next transaction which I had with reference to the application was when I was notified  
 226 by the company that they would accept the application for ten thousand dollars on the fifteen year plan only, and then I think I went to the New-York office after that; I went to the medical department. The transaction was—the policy was finally issued for ten thousand dollars on the fifteen year plan; I mean the policy was written, that is what they mean by issuing the policy; I took the policy myself from the office; I waited for it to be written that afternoon, and took it to my office in Yonkers, and made the proper entries in my book and sent it to Mr. Vosbury; that was on  
 227 the 18th day of August; I sent it to Vosbury the same day; I waited till it was issued and sent it the same day; the next thing I had to do in relation to that policy was when I had to return it to the Home Office; in the meantime I had telegrams and correspondence on the subject, I think; I had a letter directing me to return the policy; I have that letter. (Letter produced.)

The letter referred to by the witness was then read in evidence, and marked Exhibit 3.

On the receipt of that letter I directed a despatch to be sent to Mr. Vosbury requesting him to return the policy; I telegraphed him the same day, and  
 228 in answer to that telegram I received a letter from Mr. Vosbury.

The letter referred to by the witness was then read in evidence, and marked Exhibit 4.

The indorsement on the back is a memorandum of my clerk of the filing of the letter.

Q. With that letter, Exhibit No. 4, did you receive the policy in question? A. That is my re-

collection ; I think so ; I wouldn't state positively I did, but my impression is it came with that letter.

Q. If it didn't come with that letter, it came about that time ? A. Yes, that is my judgment.

Q. If it didn't come with the same inclosure with that letter, did it come about the time of the letter ?

A. Yes, sir ; I was about to say when I was 229 stopped that that letter came in a large envelope, I judge from the folding of it, in which a policy would come with it in the same envelope ; if it had been folded in this way—indicating—it would have been in a small envelope, but it was folded cross ways, so I am quite confident that the policy came with it ; the policy came about the time the letter did.

Q. What disposition did you make of the policy when it came to your hands ? A. I reported it to the New-York Office.

Q. Did you ever receive any premium on that 230 policy from anybody ? A. No, sir.

Q. So far as you know was any premium on that policy paid to anybody for the Mutual Life Insurance Company ? A. No, sir.

Q. What was the custom of business with reference to premiums on policies which were received by you, as general agent, and sent to somebody else ? A. The custom is for the local agent to collect those premiums and forward them directly to me.

Q. You have not received any premium on this policy ? A. No ; but I received back the policy in compliance with my demand.

Q. During the period in which you were general 231 agent within the district which you have stated, was there any transaction between Walton Dwight and the Mutual Life Insurance Company to your knowledge in respect to any insurance other than what took place on this application ? A. No, sir ; there was nothing to my knowledge.

Q. (Book again handed witness.) Will you look again at this book and tell me if you are able to

identify it—what it is? A. It is a Policy Register of the Mutual Life Insurance Company of New-York, kept by Mr. Vosbury—an incomplete Policy Register; the covers are gone; the first record in it is of January, 1873, the last entry is of November, 1878.

- 232 The counsel for the defendants thereupon read from the book the entry in Vosbury's handwriting, relating to the transaction in question. It was marked Exhibit "5."

*Cross-examination by Mr. Newton:*

I have the paper that I looked at when I fixed the date of my appointment. (Same produced.)

- Q. (Application handed witness.) Do you notice this alteration from twenty-five thousand to ten thousand dollars? A. Yes; it is in my handwriting. I made it, to the best of my recollection, 233 at the date that the policy was written; to the best of my knowledge, I made it at the date the policy was written. I took the policy to the office and returned home before sending it; it was accompanied by a letter; I think I have a copy of it. (Same produced.)

Q. (Returning copy letter.) Did you furnish Mr. Vosbury that blank on which the letter of Vosbury is with that printed endorsement on it? A. Yes.

- Q. You testified to Mr. Vosbury paying you premiums that he received. He did other business than this, I suppose, at Broome for this company? 234 A. Yes, other than the Walton Dwight case; he received from me, or through me, a good many policies. During 1878 and 1879 he was engaged in that business of insurance for me. I have gone there to see him. He was engaged in the business of insurance for the Mutual Life Insurance Company of New-York there. I don't know how many policies had been sent through me to him. I couldn't tell

without looking ; I should think fifty or one hundred. He was in the habit of collecting premiums upon those policies from year to year, and also premiums upon other policies that had been issued theretofore in the town of Binghamton in Broome County by that company, and remitting to me. He made his report once a month ; he remitted once a month, and oftener if he had money in his hands. His instructions were to that effect. He remitted two or three times a month, perhaps, more or less. He was in the habit of sending in his account from the first of the month to the fifth or sixth, or along there, that account covering the work of the previous month, and with that report sending the receipts for the month, if he hadn't made special remittances before. Sometimes receipts were held until the next month, but as a rule that was the custom. 235

I saw nothing and knew nothing of this policy after I sent it till its return on the 27th of August, 1878. 236

I said there was a cover upon this book originally ; I know because we never sent a book out but in that form I furnished Mr. Vosbury ; I got it from the Mutual Life Insurance Company of New-York ; I do not think he did business later than is contained in that book, for the Mutual Life Insurance Company ; he continued to do business until about the time of his death,—about the time of his sickness. There was nothing printed upon the cover of that book that was sent out. The heading “The Mutual Life Insurance Company of New-York,” was upon the book ; it is so headed and it was ruled in order to make entries of date of policy ; those rulings were all there as they are now ; the heading is “The Mutual Life Insurance Company of New-York ; and under the rulings is : “Date of Policy, Amount, Term, Applicant, Life insured, Remarks, Number of Policy, Payable ;” and then followed the twelve headings for the 237



months; under each of these there are vertical rulings, and the words "Not delivered as per order of Company," was under some blanks under the months; there was no heading for that except "Remarks," and it was not put under "Remarks."

238 I do not know when that was written there; my first recollection of seeing this book is to-day; I might have seen it when it was sent to me in blank, but never afterwards; I probably examined the book when I came to see Vosbury, to see what he had done, but it was some years ago. I do not know in whose handwriting those words "Not delivered as per order of Company" are; I should think they were written with about the same colored ink as the first entry in the book; I don't know how many times I saw Mr. Vosbury at Binghamton; a number of times; he kept an office; I don't know whether we furnished him with a sign or  
239 not; my impression is, that Mr. Vosbury had a sign and asked me to pay for it, whether I did or not I couldn't say; I furnished him blanks received from the company; I furnished him blank applications like this application here; I furnished him other blanks, receipts to collect.

Q. Were there any other books for entry than those that you furnished? A. I should think so; I don't recollect of any other though.

Q. These applications, receipts and blanks that you furnished him, were all for this Mutual Life Insurance Company, weren't they? A. Yes.

240 Q. And the name printed on them? A. Yes, sir.

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JOSEPH HILLMAN, called as a witness in behalf of the defendants, and sworn, testified as follows:

*Examined by Mr. Larocque:*

I reside at Troy, New-York; my occupation is



that of General Agent for the Connecticut Mutual Life Insurance Company, as a member of the firm of Peck & Hillman; I or my firm have held the position of General Agents of the Connecticut Mutual Life Insurance Company since 1862; our territory embraces New-York State except New-York City and Long Island. The business for that district which is done in the State by the Connecticut Mutual Life Insurance Company passes through our hands. 241

Q. (Paper handed witness.) I hand you a paper, purporting to be an application for insurance in the Connecticut Mutual Life Insurance Company, on the life of Walton Dwight; will you look at it and tell me if that application ever came to your hands, and if so, when? A. That came the first of August, from Lowell Harding, of Binghamton; he is still living; he is in Court; he is the local agent at Binghamton.

Q. The business that Harding did in the way of applications for insurance to the Connecticut Mutual Life Insurance Company, was it done directly between him and the company, or through your firm? A. Directly with us, or the firm; we received this application on the first of August, 1878; we forwarded it to the home office at Hartford, Connecticut; the small parallelogram in the upper left hand corner of the first page of this application had been done after we sent the application to the company; at the time we received it, there was nothing but printed matter in that little parallelogram; the words "approved for \$15,000 only," which now appear in red pencil marks, were not upon the application. 242 243

The application referred to was then read in evidence; it was marked Exhibit 6; the material portions thereof are contained in the Appendix.

When I received this application of the first of

August, I sent it to Hartford, to the Connecticut Mutual Life Insurance Company—to the home office; I had correspondence with the home office about it; the first thing that happened after transmission of the application to the home office, was the request of the home office for additional information; I received a letter from the home office, but I have not got it here; I received the letter soon after the receipt, at Hartford, of the application; two or three days afterwards; I then wrote to Mr. Harding, August 5th; Mr. Harding is in Court. (Paper handed witness.) That is the letter written by my clerk.

The letter referred to was then read in evidence; it was marked Exhibit 7.

Q. After you had written that letter, what next did you or your firm have to do in regard to the policy? A. We received report of an additional examination by Dr. Orton.

Q. Is that the paper which is wafered to the original application? A. I should judge it is.

Q. And this certificate of medical examination, signed by J. C. Orton, M. D., your understanding is, is the paper you got? A. Yes; when I received that paper I sent it on to the company; I sent it as soon as it was received.

Q. What did you next have to do with the application; after you sent the additional medical certificate, what did your concern have to do with this application; did you get a policy? A. Yes, we got a policy.

Q. (Paper handed witness.) Look at that paper now shown you, and say whether that is the policy that came to you on that application? A. That is the policy; it is dated August 16th, 1878; with it we received a receipt for the premium; we always receive those with policies; the receipt that we re-

ceived with the policy was the one made out for annual premium.

Q. What occurred on the subject of this annual premium? A. He desired it semi-annually and we returned it for correction; the policy was corrected, and the receipt sent for semi-annual premium.

When we got the policy we forwarded it to Mr. 247  
Harding, and it was after it had been forwarded to Mr. Harding that this mistake about the form of the time when payments were to be made, was corrected; I think the date when we forwarded it to Mr. Harding was the 17th or 18th of August.

Q. After the policy had been forwarded to Mr. Harding was there anything that took place in reference to correcting the statements in the application? A. Yes, we received a letter on that subject from Mr. Harding; I don't think I have that letter, but I have my answer to Mr. Harding; this letter I sent to Mr. Harding, is September 5th.

Q. (Paper handed witness.) Now will you look 248  
at the paper attached to the policy, and tell me whether that paper attached to the policy indicates the action that was had as the result of that correspondence on the subject of the correction? A. The prior date I have just given you, September 5th, I think is incorrect; I see that August 12th there was a correction of the application made.

The counsel for the defendants then read in evidence the policy referred to, dated the 16th day of August, 1878, numbered 151,227, for \$15,000, insuring the life of Walton Dwight. It was 249,  
marked Exhibit 8. The material portions thereof are contained in the Appendix.

I said that there was a mistake made and a policy was made out with premiums payable annually; that was afterwards corrected and they were made payable semi-annually.

Q. (Paper handed witness.) See if you identify

that letter as showing any action of yours in connection with it? Does this letter dated the 21st of August, 1878, enable you to speak anything more particularly about the correction? A. Only that it was sent to Mr. Harding at that time, the 21st; the new correction.

250 Q. Now, do you know whether you had anything to do with the attempt to get the premium made on any different basis than semi-annual or annual? Was there any negotiation on the subject of a quarterly premium? A. He desired a quarterly premium and our company declined it, as I understand it.

Q. (Paper handed witness.) I show you what purports to be a premium receipt for premium on policy 151,227, dated August 16th, for a year's premium; is that the receipt which came to you with the policy in its original condition? A. Yes, sir.

251 Q. Was that receipt at first forwarded by you to Mr. Harding, and did it come back to you, or did it remain in your possession? A. I could not say positively whether it was held in our office or was sent to Harding and came back again.

Q. (Paper handed witness.) Is this the receipt dated August 16th, 1878, the receipt for the semi-annual payment? A. Yes, I sent that receipt, when I got it, to Mr. Harding to deliver with the policy.

The receipt referred to was then read in evidence. It was marked Exhibit 9.

252 Q. After these papers, in the amended form, had been sent to Mr. Harding, what next occurred with your office in connection with this business? A. Well, I think we were ordered by telegram to retain the policy; I have the telegram. (Same produced.) The next thing I recollect is the receipt of this telegram. J. L. Greene is President of the Connecticut Mutual Life Insurance Company; his

residence, official and otherwise, is at Hartford, Connecticut; this paper, purporting to be a telegram from him, came to me in our ordinary course of business; I received it the second day of September, 1878; I took action based upon the receipt of this telegram by me; I telegraphed to Mr. Harding to hold the policy.

253

Q. (Paper shown witness.) Look at this telegram and say whether or not that is the telegram you sent? A. It is; I received an answer to the telegram I sent to Mr. Harding; I have the answer here; it is a letter dated September 3d, 1878; I received it in due course.

Q. You received a letter from Lowell Harding which was dated the 3d of September, 1878; you received it on what day? A. (Letter referred to.) I judge September the 4th. The next transaction our firm had with reference to this application and policy, was when we wrote to Mr. Harding, under date of September 5th; I have a copy of the letter. (Same produced.)

254

Q. Did you get any answer from Mr. Harding to your letter of the 5th of September? A. I think not; I have no answer; the next action I took in regard to this policy or application was to send a man down to Binghamton to examine the case; his name was Lorenzo Barber; he is dead; he died last year.

Q. Did you make any report on the subject of the information obtained, by Mr. Barber, to the company?

A. Yes; that report was not in writing; it was made verbally; I sent him on to Hartford to talk to the company, and then I got their answer. (Same produced.) The answer to which I refer is in the form of a letter, dated the 12th of September, 1878, signed by J. L. Greene, President; this is the original which I produce.

255

The letter referred to was then offered in evidence.



*The Court.*—I think I will exclude all of that letter except the last clause, "You will therefore please return the policy to us," which is received for the purpose of proving the direction and for no other purpose; and also that part which states that the company has declined to accept a risk on  
 256 his life.

The portions admitted were then read. (Marked Exhibit 10.)

On receipt of that instruction, we wrote Mr. Harding, September 20th, 1878, in reference to it; I have a copy of the letter; and by the by, I received another letter from the home office while I held the policy.

Q. But didn't you write a letter prior to the 20th of September? A. I may have written one. A letter or a telegram; I think I have, but I have no copy of it.

257 Q. Had you or not received back from Harding, in the interval between the receipt of the instruction from the president, and the letter you wrote on the 20th of September, the policy that had been sent to Harding? A. No, sir; I was holding it in Harding's hands.

Q. On the 19th of September, 1878, or on the 20th, did you or not receive a farther instruction from the home office in the form of a letter signed by the secretary and dated the 19th of September, 1878? A. I did.

258 Q. (Paper handed witness.) Is the letter shown you now, the letter in question? A. It is; it is the original.

The letter referred to was read in evidence. It was marked Exhibit 11.

Q. On receipt of that direction did you take any action, and if so, what in regard to this policy? A. We wrote to Mr. Harding as per copy of the letter of the 20th.

Q. Subsequent to the letter you wrote on the 20th, did the policy come back to your hands, and



if so, when? A. It came back to us about September 25th, with the premium receipt; we returned them to the home office.

Q. So far as you know, had the policy you had sent to Mr. Harding ever passed out of his possession until it was returned to you?

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Objected to on the ground that there is no claim or pretense that he knows anything about it, and as immaterial. The Court sustained the objection to which ruling the counsel for the defendants only excepted.

Q. Did you ever receive any premium on the policy which is in evidence? A. No, I did not; nor did I ever receive any premium on any policy on the life of Walton Dwight.

Q. In the ordinary course of business in your department, did the premiums payable on policies issued through you as agents, come into your hands when paid? A. They did. 260

Q. So far as you know or have any information on the subject was any premium ever paid to any one on the policy in question?

Objected to. The Court sustained the objection to which ruling the counsel for the defendants duly excepted.

*Cross-examination by Mr. Newton:*

Q. (Paper handed witness.) I show you what purports to be a copy of a letter from Walton Dwight to Harding, attached to the policy; when did you first see that copy letter? A. I couldn't say the date; I couldn't say that I ever saw that until I saw the policy; I am not positive that any such letter, to my knowledge, ever went through my agency to the company. 261

Q. Do you know where the company got that

or from whom? A. Well, I suppose it went from our office; I don't know.

Q. When the policy came to you about the 21st of August, had it that copy letter attached to it as it is now? A. No, this letter didn't accompany it; it was attached afterwards; I couldn't say whether it was  
262 attached to this policy as it is, when the policy came from the Connecticut Mutual Company to our office; in the ordinary course of business it would be; I don't know; I didn't attach it to the policy, personally or otherwise; it is the home office business, I suppose; I suppose they did it; I don't know that though.

Q. You don't know how the home office got such a paper, of your own knowledge? A. We asked the information from Mr. Harding—

Q. Have you got papers showing? A. I have, or can get them.

Q. Do you know how the home office got that  
263 paper? A. We wrote to Lowell Harding for it.

Q. Do you know how they got it? A. They got it through Harding, I suppose—the information.

Q. Have you any personal knowledge of the fact as to how the original of that paper came into the hands of the home office? A. No.

Q. Do you know in whose handwriting that copy is? A. No, I do not.

Q. You received that how long before you wrote the letter that I show you now, dated August 21st? A. This came from the home office just as it is, with that letter on; that is the first time I ever saw  
264 it, so far as I remember; I sent that policy to Mr. Harding the day that letter bears date.

Q. You mention here that between the time of the first application and the time that you sent that policy, an application was made to reduce from yearly payments to semi-annual payments; have you that application? A. I didn't design to be understood so; will you allow me to explain?

Q. The application coming to you they sent back

and the new application was the request to have another doctor examine him, wasn't it? A. No, sir; I didn't say that the old application was sent back. I said if the old application was corrected—that is, additional testimony or additional statements of his health, &c., which—

Q. (Int'g.) Have you that additional statement 265  
of his health? A. There is a copy of it: that letter that is attached is a part of the application.

Q. And is that letter the only additional application that you know of that he made? A. No, sir; I only judge from the paper here that this is a copy of the letter that Mr. Dwight sent.

Q. I ask you the question whether that is the only additional application that you know of? A. No, there must have been more, because I wrote for it and got it, and there is a copy of it.

Q. Do you know of any other application than what is here? A. No, sir; I can't know only as I 266  
see the papers.

Q. (Telegram handed witness.) Did you send a dispatch upon receiving this policy? A. Yes, sir; I presume that is the dispatch; we don't generally keep a copy of dispatches of that kind.

The counsel for the plaintiffs read the telegram referred to in evidence; it was marked Exhibit H.

Q. (Letter shown witness.) Your telegram speaks of the policy, was the policy sent with that letter now shown you? A. I suppose it was; evidently it was; my clerk wrote the letter. 267

The letter referred to was then read in evidence; it was marked Exhibit I.

The next time I saw the policy after I had thus sent it to Mr. Harding, was about the 25th of September.

Q. Are you positive it was on or before that day?

A. Well, Mr. Harding's letter to me was dated the 24th, enclosing it; in the meantime the policy had not been in our hands from the time I sent it to Mr. Harding; I did not keep it some time then before returning it to the company at Connecticut; we returned it the next day; I have got a copy of  
 268 the letter; I next saw the policy here and now.

Q. (Telegram shown witness.) Will you look at that telegram—can you say whether you sent that telegram? A. I did send it September 2d, 1878; I don't know anything about that "30" on it; I telegraphed on the 2d day of September; I remember the date from my books and papers, that is all.

Q. Between August 21st, when you sent the policy, and September 2d, had you any communication with Mr. Harding whatever, relative to this policy? A. I don't know that I had; I couldn't  
 269 say.

*Re-direct-examination by Mr. Larocque :*

Q. (Paper handed witness.) You recognize that paper as the telegram you sent Mr. Harding, which the counsel on the other side showed you? A. Yes.

The telegram referred to was then read in evidence, and marked Exhibit 12.

[The date is a mistake; it should be the second of September.]

270 Q. (Letter handed witness.) I show you another letter addressed to John M. Taylor, Secretary, Hartford, signed Peck & Hillman, by somebody, and ask if you recognize that as a letter sent by your firm to the Connecticut Mutual Insurance Company? A. Yes.

The letter referred to was then read in evidence; it was marked Exhibit 13.

Q. And it was in obedience to that request that the second receipt was sent? A. Yes.

The counsel for the defendants here read in evidence a letter admitted to have been written by Walton Dwight, in relation to the matter enquired of; it was marked Exhibit 14.

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*Re-cross-examination by Mr. Newton :*

Q. You stated this forenoon that Mr. Dwight asked to amend his application, by changing the premium from annual to semi-annual; upon reading this paper, let me ask you whether it was not the fact, that the original application was semi-annual, and the company sent it annual? A. Yes, it was so.

Q. And you made the correction in your letter? A. Yes; they sent it on annual, and we sent it on to have it made semi-annual, according to the application; Mr. Dwight had nothing to do with that unless Mr. Harding asked us to—I don't know; we did it, I know; Mr. Harding was appointed a local agent March 7th, 1876.

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LOWELL HARDING, a witness called on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in the city of Binghamton, and resided there in the year 1878; I acted as local sub-agent for Peck & Hillman in connection with their business, at that time; I have in Court with me, my letters and correspondence in regard to an application for a policy on the life of Walton Dwight, which was made in the summer of 1878; they are in the hands of the counsel for the plaintiffs, I presume—all that pertain to this case; I gave them to

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Mr. Chapman ; I gave him all the papers I could find in reference to this transaction, except that insurance commission ; all the correspondence I could find bearing upon the application of Walton Dwight, I handed to Mr. Chapman ; I think so : I looked them up at his request, and gave him all I could find.

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I received from Walton Dwight, in the summer of 1878, an application for the Connecticut Mutual Life Insurance Company, for a policy on his life ; I received that application on the 31st day of July, 1878.

Q. (Paper handed witness.) Look at that paper now shown you, marked "Exhibit 6," and say whether that is the application you refer to ? A. It is ; that is the application.

Q. When you first received it, this certificate of the medical examination by J. G. Orton, which is  
275 wafered to the application, was not attached to it ? A. It was not ; when I got the application I sent it to Peck & Hillman, of Troy, New-York.

Q. What next happened between you and them in regard to it ? A. I think they wrote me for further information and a further medical examination.

Q. And was it in pursuance of that request that this certificate of Dr. Orton was obtained ? A. Yes, sir ; I went to him for it ; that was afterwards.

Q. What was next done between you and them in respect to this application ? A. Well, I think they wanted some further information in regard to  
276 Mr. Dwight, and some statement, I think, in regard to spitting of blood, or some question ; I don't remember now exactly what it was. I think I received a letter from Peck & Hillman between the time of the application and the issuing of the policy ; I can't recall the date ; I have not that letter ; I am not sure when I last saw it ; I don't know ; in the process of time I received a policy.

Q. (Paper handed witness.) Look at the paper

now shown you, marked "Exhibit 8," and say whether that is the policy? A. I think it is. Yes; in connection with the policy I received the premium receipt now shown me, marked "Exhibit 9"; to the best of my recollection, I received those papers on the 22d day of August, 1878; I showed them to Mr. Walton 277 Dwight; he looked the policy over and said, "all right; at such a day, you go to Mr. Pine and he will pay you the premium on the policy"; I retained the policy until I went to Mr. Pine; I can't tell definitely how long it was after that when I went to Mr. Pine, but I should say from six to ten days; in eight days, perhaps; within a few days. He said on such a day Mr. Pine would be able to pay. To the best of my recollection, he said, "Such a day you go to Mr. Pine and he will pay you the premium on the policy"—naming the day.

Q. Did you go to Mr. Pine on the day designated? A. I went to Mr. Pine's office and he was 278 not in; he was in the country that day, I think; but I went the following day.

Q. What occurred between you and Mr. Pine with reference to the policy? A. Mr. Pine took the policy and looked it over, and then he looked at that letter attached to it from Mr. Dwight and says, "That is a part of the application and is considered as such." and he could not pay the premium on it until that was changed; that Mr. Dwight said there he was insured in the Equitable for \$40,000, and that he didn't intend to say that, but intended to say he was insured for what that policy 279 had earned, or something to that amount; that he had a paid up policy for the surrender value of the \$40,000 policy; I think that is all which took place then, unless I left the policy with him for examination.

Q. You left the policy with him for examination?

A. I am not confident as to that; I do not think I saw him again the next day; I can't give the day.

when I got the policy back from him ; I got it back between the time I went there and the time I received notice to hold it in case it was not delivered ; I can't fix in any way the date of that interview with Mr. Pine, when I left the policy with him for examination, but I should say it was from six to  
 280 eight days from the time I received the policy ; Mr. Dwight mentioned a few days in advance—the policy was received on the 22d—that would make it the 28th to the 30th of August.

Q. (Telegram, Exhibit 12, handed witness.) Had or had not the policy been returned to you by Mr. Pine before you received this telegram ? A. I had the policy in my possession when I received that ; it had been returned by Pine then, or I got it , I had it in my possession ; I am certain of that ; but how I received it I am not clear.

Q. (Telegram handed witness.) I show you another telegram, dated Troy, the 16th of September,  
 281 addressed to you by Peck & Hillman, and ask you to look at it and see if you recognize it as a telegram received by you from those gentlemen, on the same subject ? A. Yes.

The telegram referred to was here read in evidence by counsel for the defendants. It was marked Exhibit 15.

The policy was then in my possession.

Q. At about the 12th or 15th of September, 1878, did you receive any communication from Peck & Hillman on the subject of returning the policy to  
 282 them ? A. I think it was at an earlier date ; I did receive a telegram to hold it, but did not receive a telegram to return the policy.

Q. When did you receive direction to return the policy ? A. I think about the 24th September ; the 23d or 24th ; I then returned the policy to Peck & Hillman.

Q. Had the policy remained in your hands from

the time you got it from Neri Pine until you returned it to Peck & Hillman? A. It had.

Q. Had you ever received any premiums on that policy? A. No.

*Cross-examination by Mr. Newton :*

Q. (Paper handed witness.) I show you the telegram of August 21st, Exhibit "H"; did you receive that telegram from Peck & Hillman? A. Yes; I received it on the day it bears date, the 21st of August; after receiving the telegram I saw Mr. Dwight that day or the day following; I am not confident as to that; as soon as I could find him, and I think I found him within a day or two; I had then the policy at my office. 283

Q. Did you see Mr. Dwight after receiving this telegram before you received the policy? A. I am not positive.

Q. When you had the policy you mentioned an interview with him, and you say he said to you to call upon Mr. Pine at such a day and he will pay you. What reply did you make to that, if any, when he told you to go to Pine? A. I think I told him I would go there. 284

Q. And then you separated, you and Dwight? A. He went away from my place.

Q. Do you remember of any correspondence of any kind between your receiving the policy and your interview with Dwight, and the time that you received this telegram to hold for further advisement? A. I think I did; I have not got the correspondence; I don't know what has become of it; it is probably destroyed? 285

Q. (Paper handed witness.) In whose handwriting is the pencil marks on the back of the application of the Connecticut Company? A. I don't know; it is not mine; it was not mine; it was not there when I sent the application to the company.

Q. How large a territory were you acting as

agent in? A. The County of Broome, but mainly in Binghamton; I do no outside business; I made the collections for this company for that county; I made applications for the company; I received blank applications, but not blank policies; I also received receipts signed for premiums; and made my reports monthly; I made my reports sometimes about the first of the month, and sometimes it run several days; when those reports were made it was my custom to make the report of receipts and business for the month preceding; and then I would remit; I had a book; I have it with me. (Book produced.) Here is the entry I made in relation to the Dwight case; that is my book for business of the Connecticut Mutual Life Insurance Company, and the only book I ever had; it was sent to me from Peck & Hillman; I continued in this agency from March, 1876, to perhaps September, 1880; this book covers my agency at Binghamton, and is the book I call the Policy Register; I made the following entries under the following headings in this book in regard to this policy.

The counsel for the plaintiffs then read in evidence portions of the entry referred to.

(Marked Exhibit J.)

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ROBERT M. FORSMAN, called as a witness in behalf of the defendants, and sworn, testified as follows:

*Examined by Mr. Larocque:*

I reside at Williamsport, Pennsylvania; I have resided there 30 odd years; I knew the late Walton Dwight, formerly of Binghamton, in his lifetime; I made his acquaintance, I think, in the fall of 1865; subsequent to that time I had business re-



lations with him ; he was stopping in Williamsport in the winter of '66 and '67 ; while residing there he boarded, at the Herdic House ; his family was with him ; I was residing at that time at the same place and in the same hotel ; I was then and am still engaged in the lumber business.

Q. How frequent communications were there between yourself and Col. Walton Dwight during that winter ? A. We were together frequently ; I was in the habit of going into his room quite often, and he was in the habit of coming into my room. 289

Q. Do you know whether or not at any time between the first of December, in the year 1866, and the first of May, in the year 1867, Walton Dwight was ill at that hotel ? A. Yes, sir ; I remember one circumstance ; as nearly as I can fix the time of that illness, it was the forepart of the month of March, in the year 1867.

Q. Is there any circumstance which enables you to fix that date with some degree of certainty ? A. I think there is. 290

Q. Do you know whether or not Walton Dwight had been to Canada a few months prior to that date ? A. He so stated to me that he had.

Q. Do you know whether or not he had any business on hand which called him back to Canada about that time ? A. Yes, sir.

Q. Was that a business with which you had any connection ? A. Yes, sir ; I had connection with it.

Q. What was the character of Walton Dwight's illness at that time ? What did you observe about it as to symptoms of indisposition ? A. He was coughing severely and had hemorrhages ; he was confined to his room ; I have been present when Walton Dwight spit blood ; I should call it spitting blood, in my way. 291

Q. How frequently ? A. Well, at intervals ; I can't state how often ; he was in the care of a medical attendant at that time ; his physician was Dr. W. C. Doane, of Williamsport.

Q. Do you know how long Dr. Doane was in attendance upon him at that time? A. During that illness, sir; I don't remember how long it lasted, quite; Mr. Dwight was confined to his room at that time; I heard him cough during that time; I couldn't say exactly how frequently he had a very severe cough at that time, so far as my observation went.

Q. On the occasions when he spit blood, as you have stated, had he had a cough preceding that spitting of blood? A. Yes, and very often would have very severe coughing spells prior to that.

Q. And it was at such times that you saw him spit blood? A. I never saw him spit blood but this once.

Q. Had he a coughing spell at that time? A. Well, my recollection is that he had.

Q. Did he ever say anything on the subject of this cough or spitting of blood? A. Yes, sir; I have heard him speak on that subject quite frequently; he said that he regretted having these severe coughs, and it would carry him off some day, he thought.

Q. Did he ever say anything upon the subject of ever having had a hemorrhage? A. Yes, sir; he said he had had hemorrhages; I don't recollect him saying from what source they proceeded.

Q. Were you called into the room of Mr. Dwight at any time during his sickness? A. At the time of the sickness I am speaking of, I was called in by Mrs. Dwight.

Q. Was that the occasion upon which you saw him spit blood, as you have stated? A. Well, that was at the time of that sickness; I don't know at that particular time he was spitting blood; I was in there frequently during his sickness.

Q. Did you not, upon that occasion, see him raise or spit blood? A. While I was in the room I saw him raise or spit blood.

Q. To what extent? A. Well, I thought quite liberally; I should say, perhaps, a half pint he showed me; he called attention to it himself; it was in a vessel sitting beside the bed.

Q. Did you observe it close enough to be able to state what the color of it was? A. No, sir; I think not, except that it was red. 295

*Cross-examination by Mr. Smith :*

Q. Are we correct in understanding you that you never saw Walton Dwight spit blood but once?

A. Yes, sir; on that one occasion only.

Q. Are we correct in understanding you that you were unable now to speak of the tint or color of that? A. No more than that it was red; it was blood; that is all I know about it.

Q. But the degree or character of the redness you are not able to describe? A. No, sir; I couldn't.

Q. Upon that point your recollection does not serve you now? A. Well, I have no recollection about it; that was in the spring of 1867; March, 1867; about 16 years ago; this particular incident occurred in his room in the Herdic House, in Williamsport, Pennsylvania. 296

Q. Who, besides you and Mr. Dwight, was there when this incident occurred? A. I think Mrs. Dwight was there; I know she was.

Q. Are you able to say whether Mrs. Walton Dwight saw then all that you saw about blood?

A. No, sir, I am not.

Q. Did she or not? A. I do not know whether she did or not. 297

Q. Who else was present? A. I can't speak positively whether anybody else was.

Q. I want to know whether you are able to tell from memory whether any other human being was present? A. I am not able to say positively whether there was any other human being present. I don't remember that there was any one else present; this

occurred in the morning ; as nearly as I can state I should say between 7 and 9 o'clock in the morning, when I was first called into the room ; it was in the spring, in March.

298 Q. Who called you in ? A. Mrs. Dwight spoke to me about it, and asked me to come in and see him.

Q. Where were you when she called ? A. I can't state positively where that was ; I think somewhere in the hall of the house.

Q. Anybody on earth present to hear that ? A. Not that I know of.

Q. Is there anybody in this world who knows that circumstance, of your seeing this blood ? A. I couldn't answer for anybody but myself.

Q. Can't you tell whether there was other persons that knew this thing ? A. I have heard others say so.

299 Q. I ask whether you know of any person in this world who knows of this circumstance you have just sworn to ? A. No, sir.

Q. Have you been subpoenaed here ? A. Yes, sir ; I am aware of the fact that a subpoena would not bring me here from Pennsylvania : I was not compelled to come ; I came at the instance of the attorneys on the other side ; Mr. Barlow is the name of the gentleman I refer to ; I am not acquainted with the gentleman particularly.

300 Q. When and where did you make the arrangement with Barlow, by the terms of which you were to come here and testify ? A. I saw him in Williamsport, at the Herdic House.

Q. If ever, when and where, I ask, did you make the bargain, by the terms of which you were to come here and give testimony ? A. I never made a bargain with anybody about coming here, if I understand what a "bargain" is.

Q. Have you had any conversation with any one relating to your pecuniary compensation for coming here to give testimony ? A. No, sir.

Q. Then you came here without any promise of pay? A. Nothing more than my expenses. I was told my expenses would be paid. Mr. Barlow told me that, I think, a couple of weeks ago. I think he told me twice, I think last fall, or last spring, or during the summer sometime, in Williamsport.

Q. Did you disclose to him what knowledge you had of this matter? A. Partially; what questions he asked me I answered to the best of my ability; that was as early as last fall, I think it was. 301

Q. Do you remember the circumstance of some gentlemen being down to Williamsport to examine witnesses upon this subject? A. Yes, sir.

Q. Where were you when that testimony was being taken down there? A. I was there, I think, one day while they were there.

Q. Right in the same house? A. In the same town. I was in the same house occasionally; I was not there when the testimony was being taken; I was in the same city and town. I resided there while the testimony was being taken. 302

Q. Were you in the same house while the testimony was being taken? A. I don't know where the testimony was taken. I understood they were taking testimony there, and that is all I know about it.

Q. Did you disclose to anybody there then what you knew about this case? A. I think I had a talk there.

Q. Did you disclose to anybody there then what you knew about this case? A. Yes, I think I did.

Q. Who was it? A. I think Mr. Daniel Magone, now present. I there stated about what I have stated here to-day. 303

Q. How long had you known Colonel Dwight? A. I first met him in 1865. I didn't know him before that.

Q. Had you been associated with him in business since that? A. Yes, subsequent to that time I was.

Q. Were you ever engaged with Colonel Dwight in the transaction of business? A. Yes, sir; from



the fall of 1866, I think it was, up to pretty near during his lifetime. We owned stock in the same company, together, the Williamsport and Canada Lumber Company. That was a company involving the management of quite a large estate, some six hundred thousand acres and odd, I think.

304 Q. Was that an estate of land which Dwight had originally bought and out of which this company was organized ; was that company organized out of this large tract purchased by Dwight ? A. He purchased for this company, so he said.

Q. And was it in connection with these Canada lands that Dwight had occasion to go to Canada ?

A. I suppose so ; he may have had other business there ; I don't know ; that was a business to go there and manage the business in connection with this six hundred thousand acres of land.

Q. Had he been there frequently before he was sick ? A. He had been there twice only, to my  
305 knowledge.

Q. Did he go there very soon after this severe sickness, as you characterize it ? A. He so stated he was going there ; I don't know whether he went there or not.

Q. Don't you know he went there soon after ?

A. I have grave doubts whether he did or not.

Q. Did Colonel Dwight leave shortly after the sick period of which you have spoken, and go to Canada ? A. He left Williamsport with the intention of going to Canada. I don't know whether he went there or not ; this was shortly after this period to  
306 which I have referred, when I say he was sick. I don't remember how long he was absent ; I should judge about two weeks. Prior to this period of sickness he had been boarding at this hotel about two years, I think. His wife was there with him, I think.

Q. During that time had you been there ? A. Not the entire time ; I came there in the fall of 1865, and he was there when I came there, I be-

lieve ; that is my recollection ; that they were then boarding there when I came there.

Q Who was the landlady of that hotel during that period ? A. Mrs. Hoppes.

Q. Do you know Mrs. Herdic ? A. I know a number of Mrs. Herdics. 307

Q. Do you remember the occasion when the testimony was taken down there ? A. There has been testimony taken down there once or twice ; this last fall I was told there was testimony taken there.

Q. Don't you know whether there was or not ? A. No, sir ; not from my own personal knowledge.

Q Who called you in when Mr. Dwight was sick ? A. Mrs. Dwight.

Q. Was he in bed ? A. Yes, sir.

Q. Had he been sick some time ? A. No, I think not ; not when I first went in.

Q. Had he been sick at all prior to that, to your knowledge ? A. He complained a number of times ; I don't remember his complaining at that time of having a bad cold. I don't remember whether he had the appearance of having a bad cold. 308

Q. Do you regard a man, having a cough, as an indication that he has caught cold ? A. Yes, sir ; that is one indication.

Q. Did he cough like a man that had caught cold ? A. No, sir, I don't think he did.

Q. Then, is there some way by which you can distinguish a cough when a man has caught cold and when he has not ? A. No, I don't know as there is ; he would have very severe coughing spells. 309

Q. I ask you whether there is any way by which you could distinguish a man having any cold from any other ? A. No, sir, I don't think there is that I can discover.

Q. Had he been away from home shortly before that sickness ? A. I don't remember whether he

was or not ; I couldn't tell ; not immediately before ; he would go away for a day or so.

Q. When last before this incident had he been away to your knowledge ? A. I couldn't answer your question.

310 Q. Can't you form any idea as to when—last before the incident that you have spoken of occurred ? A. It might have been a week or ten days, or it might have been three months.

Q. When, as near as you can state it, had he been away ? A. That is as near as I can state it ; within ten days or three months ; I do not know where he had been last before that.

Q. When you were called in that morning, on the occasion of which you have spoken, did you have a conversation with him ? A. Yes, sir.

Q. Did anybody hear that ? A. I don't know whether they did or not.

311 Q. Did Mrs. Dwight hear it, if you had one ? A. If she had been there she would have heard it ; I can't say positively whether she was there or not ; I couldn't say who began the conversation, nor who ended it.

Q. What was the first thing said, that you remember ? A. I can't answer that question.

312 Q. What was the first thing said, if you remember ? A. I can't say. I don't know what was the first thing said ; I remember going in there, and I and Mr. Dwight were very intimate, quite intimate, and of course I would go into his room as I would go into any gentleman's room, that was sick ; very likely the first thing I said to him was "Good morning." I don't know as I even said that.

Q. Was there anything said that you now remember ? A. No ; I don't remember a word that was said, positively ; not a single word.

Q. Was there anything said by you that you now remember ? A. No, sir.

Q. Was there anything said in that interview by anybody, that you now remember ? A. Not that I

remember at that particular interview ; I don't remember of any particular word being said.

Q. Where was the blood that you saw ? A. In the chamber ; in a vessel that was sitting alongside of the bed.

Q. Do you know where the blood came from, of your own knowledge ? A. Yes, sir ; that is, I saw 313 him spit blood.

Q. Did he spit in this vessel ? A. Yes, sir.

Q. This chamber was the ordinary earthen chamber ? A. I don't remember what it was, now.

Q. Do you remember that it was a chamber ? A. It was a vessel of some kind, because he called my attention to it at the time ; he showed me the amount of blood.

Q. Do you remember what the vessel was ? A. No, sir ; I don't remember what kind of a vessel, or the size of it.

Q. Or what was in it ? A. Yes, I remember there was blood in it. 314

Q. Was there anything else in it ? A. Not that I remember.

Q. Did you look to see ? A. Not particularly.

Q. Do you know now, as you sit there, whether there was anything else in it besides blood ? A. No, sir ; I don't.

Q. When you say a half pint, are you estimating the contents of whatever was in that vessel ? A. Yes, sir.

Q. Whatever there was, was about half a pint ? A. Yes, sir ; I should judge so.

Q. Then this vessel, whatever it was, would be used for the purpose of spitting in ? A. 315 He used it for that purpose ; I couldn't say how many times he coughed while I was in ; it was periodical ; I think there were quite long intervals between the coughing spells ; he would get very severe coughing spells.

Q. Was it the next day he got up out of bed and went away ? A. No, sir.

Q. How soon after that did he get out of bed ?  
A. I think that illness lasted about a week.

Q. How soon after you saw him did he get out of bed ? A. I think that day ; he was up and down.

316 Q. Was he dressed or undressed when you saw him—night clothes on ? A. I think he had his ordinary clothes on ; I think he was lying upon the bed with part of his dress on—nor his night clothes ; I can't say whether he had his boots on or not ; my impression is, that his illness lasted about a week.

Q. Can you say that during that sickness he was sick abed at all—in the sense in which we understand the term—undressed and in bed ? A. No, sir ; but what we would call confined to his room ; I think I saw Dr. Doane there ; I will not be very positive about it.

317 Q. You don't remember that ? A. I know the doctor attended him ; I know a doctor when I see him around ; I can't say that I actually saw him there, or any other doctor.

Q. Did you have any other business transactions with Dwight besides this 600,000 acres of land ? A. I think not, sir ; I don't remember now.

Q. Was this the transaction about which they had the lawsuit ? A. Yes, sir. There was one case tried, I believe, at Binghamton ; I can't fix the date exactly.

Q. Can you give about the date ? A. There is a book in front of the gentlemen that will tell the date.

318 Q. I want the date so as to fix it whether this will or not. A. I should say it was 1871 or 1872 ; that is my impression, although I am not certain.

Q. Was Mr. O. W. Chapman, the gentleman present, one of the counsel for Dwight in that case ? A. Yes, sir.

Q. And Judge Martin ? A. I don't remember Judge Martin. Senator Kernan was one of the counsel.



Q. Did you have a lawsuit with Mr. Dwight?

A. I think there were proceedings commenced in which I was interested.

Q. Do you mean that you have ever had a lawsuit and didn't know it? A. I might I have had; I have heard of such things.

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*Re-direct-examination by Mr. Larocque :*

Q. On your cross-examination you are understood to have said that you didn't think Mr. Dwight coughed as if he had a bad cold, if I quote your language right; will you describe the cough to which you have referred? A. It was a very severe one, in my opinion. It appeared to come from his chest, or his lungs, and was very severe. He got very red in the face and coughed with a strain.

*Re-cross-examination by Mr. Smith :*

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Q. Is there any way—any fact within your knowledge by which you could tell whether this cough of Dwight's came from his lungs or some other organs? A. No, sir.

————

PETER HERDIC, called as a witness in behalf of the defendants and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside at Williamsport, Pennsylvania; have resided there about 30 years; I was the owner of the Herdic House in 1866-7; I leased it; during the winter of 1866-7, I resided at Williamsport, in my own house. I knew Walton Dwight late of Binghamton, in his lifetime. I made his acquaintance first, I think about 20 years ago. I knew him when he was at Coudersport, Pennsylvania, before he came there. Walton Dwight was residing in

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Williamsport during the winter of 1866-7 ; he was boarding at the Herdic House ; his wife was with him ; I had business transactions with him during that season ; it was in connection with the Canada lumber land ; I was in the habit of seeing him pretty often, every day or so during that winter ;  
 322 I was sometimes in the habit of being in his rooms in the Herdic House, but not very often ; he used to go to my house sometimes, and I met him in the town. I met him every day most, when he was at home.

Q. Do you recollect whether or not he was ill during that winter ? A. I do ; this illness occurred in March, 1867 ; he was confined to his room most of the time, for a period, I should think, from ten days to two weeks ; that is the best of my recollection.

Q. So far as you were able to observe, what was the matter with him ? A. Well, he returned from  
 323 Canada, and whether he took a severe cold there or not, I don't remember. He came back and was sick in the room, and coughed a good deal. He always coughed when he laughed severely—it set him coughing. I can't say whether it was a cold or not that took him down.

Q. What sort of a cough was it—severe or light ? A. Pretty severe sometimes.

Q. How frequent a cough ? A. Well, I was not in his room but a few times while he was sick. I went in to see him on business, to see how he was getting along to get back to Canada to attend to  
 324 an operation there, and he coughed pretty often.

Q. Was he expected to go to Canada while he was ill ? A. Yes, sir.

Q. Was it in connection with this Canada lumber operation ? A. Yes, sir, to pay a lot of money by the first of April, or lose the sale. This transaction in Canada lands was an optional transaction of some sort ; a certain sum had to be paid by the first of April or he would

lose the money he had paid. The property was to go to the corporation. A few of us bought it and made up a company. I was one of the parties interested in the company. I was out with him the first time—before he went back to make the first purchase. It was a matter of interest to me that he should be able to go before the first of April. Dr. W. C. Doane attended him. We wanted the doctor to go with him ; he declined. He said he could get along alone. We thought it was not safe to go alone. 325

Q. During that illness, or during the entire time, did you ever see him spit or raise blood? A. Well, when walking along with him on the street, when he would get to laughing and coughing, I would see him spit blood.

Q. Did you ever at any other time than in the street see him coughing and spit or raise blood? A. I saw it in his room. The blood looked like fresh blood ; it was red, I think rather light, bright color ; bright fresh blood, I should think. 326

Q. Did you ever have any conversation with him on the subject of the cause of this spitting of blood?

A. He said he had had hemorrhages, and he expected it would carry him off some time.

Q. Did he say anything about the place from which he supposed the blood came? A. He said he had hemorrhages, I understood, of the lungs, and he thought it would carry him off some time. I don't know particularly that he said that many times ; I won't say he said it many times. I heard him say that. 327

Q. Was it during that season? A. I can't say whether it was when he was sick, or before or afterward ; I don't remember.

*Cross-examination by Mr. Smith :*

Q. Are you able to remember now how many times you have heard Dwight speak of hemor-

rhage? A. I don't know that I have heard him more than once or twice ; I wouldn't state. I don't think I heard him say so many times. I won't fix particularly the times. I wouldn't say now that I am able to remember more than one time. I don't remember where that was, but I think it was on the street, going down town from the hotel one day he  
 328 got to coughing. He got to laughing. I think it was about this time while this transaction was going on. I think it was on the walk going down from the hotel, down town in Williamsport. I think it was in the winter, in the spring of 1867. I don't remember whether it was clear or cloudy that day. Nobody else was present at the conversation ; we were walking down alone.

Q. Do you mean to be understood by this jury that after this lapse of time you are able to remember the words that he used. A. I know he said—yes, I do ; I remember what we were talking about,  
 429 if that is what you want—the subject we were talking about ; we were talking about this Canada arrangement, and he got to laughing and coughing, and he spit this blood, and I spoke about it, and he said he expected the damned thing would take him off some time.

Q. The “damned thing”? A. Yes, sir ; I remember that ; I remember those words now.

Q. Do you remember the words that were used by any other mortal that day ? A. I don't remember what I said to other people that day, now.

Q. Can you remember the words used by any other human being ? A. I don't know that I can.  
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Q. Now, when he spit, did he spit on the ground ? A. He spit right out on the walk.

Q. And was it there on the walk you saw the color of it ? A. I did ; I saw that he spit blood.

Q. You saw the color of the spittle ? A. I saw it as he raised blood and spit it, and also in his room when he was sick.

Q. When you were walking and he spit, did you



The Particular Attention of Applicants is called to the INSTALMENT FEATURE, which is fully explained in the Company's Documents.

Application for Insurance in

Form A.

DO NOT WRITE IN THIS SPACE OR ABOVE IT.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW-YORK,

140 to 146 BROADWAY, CORNER OF LIBERTY STREET, NEW-YORK CITY.

The following questions will be answered by the person proposed for Insurance.

1. A. Give your full Name, <i>Walton Dwight</i> . Occupation or Employment ; if more than one, state all. <i>General Dealer in Grain and Produce</i> . Former Residence, if recently changed,	RESIDENCE. Town, <i>Windsor</i> . County, <i>Broome</i> . State, <i>New-York</i> . Former Occupation, if recently changed,	PLACE OF BUSINESS. <del>Windsor</del> — <i>Mostly Chicago</i> .
In giving the Occupation of the Person, it is not sufficient to state (for example) that he is a Merchant or Mechanic, but the particular branch of Business, or the actual Trade, must be specified.		
2. A. Give the name of the person for whose benefit the insurance is proposed. B. Residence. C. Post-Office Address. D. Relationship. E. State whether this person has an interest in the life proposed for insurance to the full amount applied for. F. Are you aware that the Company will not be liable for insurance procured on any single life for over \$30,000 (the prescribed limit)?	A. <i>Frank Dwight</i> . B. <i>Windsor</i> . C. <i>do</i> .	D. <i>Son</i> . E. <i>Yes</i> . F. <i>Yes</i> .
3. A. State the amount of insurance applied for. B. The kind of Policy desired. C. Whether the Premium is to be paid annually, semi-annually, or quarterly. D. If for the benefit of the wife of the person proposed for insurance, state precisely whether it shall be paid to her children, to his children, or to the children of the two, if she be not living at its maturity. E. If an Endowment Policy is applied for, state to whom it shall be paid in case of the death of the beneficiary before the maturity of the contract.	A. <i>10,000</i> . B. <i>15 year—Plain Life</i> . C. <i>Semi-annually</i> . D. E.	3. A. Do you wish the Policy made payable in One Sum or in instalments? <i>One sum</i> . 3. B. If in instalments, how many? 3. C. Do you wish such instalments to be Annual, Semi-Annual, or Quarterly?
4. A. State your Place of Birth. B. The Date of Birth.	A. <i>Windsor, Broome Co., N. Y.</i>	B. <i>1857, Dec. 20th</i> .
5. A. What is your Age at the nearest birthday? B. Weight? C. Height? D. Are you Married?	A. <i>41</i> . B. <i>240</i> . C. <i>6' 2"</i> . D. <i>Yes</i> .	
6. A. Are you now insured in this Company? B. If so, for how much? C. Give the Number and Amount of each Policy.	A. <i>No</i> . B.	C.
7. Is your Life now insured in any other Company? If yes, give the Name of each Company, and the Amount in each.	<i>Yes; Equitable, Washington, Germania, National, Universal, Globe and others.</i>	
8. Have you made any proposal or opened a negotiation with any person for insurance upon your life in any Company, upon which a policy has not yet been issued? If so, give the Name of each Company, and the Amount proposed in each.	<i>Yes; Mutual Benefit, \$15,000; Connect. Mut., \$25,000.</i>	
9. Are you engaged in the manufacture or sale of intoxicating drinks? Have you ever been so engaged? State full particulars.	<i>No</i> .	<i>No</i> .

Dated at *Binghamton* this  
31st day of *July*, 1878.

Signature of the person  
proposed for insurance. } *WALTON DWIGHT*.  
In the presence of *D. C. VOSBURY*.

APPLICATION.—Form B.

Questions to the Person proposed for Insurance, the Answers to which are to be submitted to the Medical Examiner,  
Who will witness the signatures thereto.

1. Are you the same person described in Question 1, Form A, of this Application? Are your full Name, Residence, and the other particulars there mentioned, correctly answered and recorded? Have you carefully read the answers given in Form A, and is the signature thereto your own proper signature?	<i>Yes</i> .	<i>Yes</i> .
2. Has any application for insurance upon your life ever been made to any company upon which a Policy has not been granted? Has any unfavorable opinion upon the insurableness of your life ever been given by a physician? In either case, state full particulars.	<i>Not to my recollection. None.</i>	
3. Are you now in good health? Have you always enjoyed good health?	<i>Yes; generally good.</i>	
4. Have you been subject to or had any of the following Disorders or Diseases? Head-aches, severe, frequent or protracted; Loss of Consciousness; Dizziness, Fits or Convulsions, Paralysis, Delirium Tremens, Sunstroke, Apoplexy, Insanity, Habitual Cough, Asthma, Bronchitis, Pleurisy, Inflammation of the Lungs, Spitting or Coughing of Blood, Consumption, or any form of trouble referable to the Lungs; Shortness of Breath, Palpitation of the Heart, Difficulty in Swallowing or any other symptom indicating Disease of the Heart or neighboring vessels; Dyspepsia, Habitual Constipation, Chronic Diarrhoea, Dysentery, Bilious, Renal or Hepatic Colic; Hemorrhoids; any other Disease of the Stomach or Bowels; Jaundice, Liver Complaint of any form, Yellow Fever, Dropsy, Swelling of the Feet, Hands or Eyelids; Difficulty in Urinating, Excessive or Scanty Secretion of the Urine, Gravel or any symptom pointing to Bladder or Kidney trouble; any Disease of the Genital or Urinary Organs; Syphilis, Neuralgia, Rheumatism, Suppurating Glands, General Debility, Gout, Palsy, Eruptions or Disease of the Skin; Cancer, Erysipelas, Open Sores, Lumps or Swellings of any kind, Fistula, Varicose Veins.	<i>Have had slight attacks of Rheumatism but nothing serious and have had Dyspepsia, and trouble with stomach, but nothing, at present, nor for some time past—not any trouble.</i>	
5. Have you been subject to or had any difficulty with your Eyesight or Sense of Hearing?	<i>No</i> .	
6. Has your Weight recently increased or diminished? If so, to what extent and how rapidly, and to what cause do you attribute it?	<i>Slightly increased each year.</i>	
7. Have you ever had Inflammatory Rheumatism? If so, how many attacks? In what years? Duration? How Severe? Were they accompanied by Cough, Shortness of breath, Pain in the chest, Palpitation of the heart?	<i>Only as above mentioned.</i>	
8. A. Are you ruptured? B. What form? Single or double? C. Is it reducible? D. Is a suitable Truss worn?	A. <i>No</i> . C. A. <i>No</i> . No.	B. D.
9. A. Have you ever had any malformation or injury, or undergone any surgical operation? B. If so, state fully its nature, duration and results.	B.	
10. Have you any predisposition, either hereditary or acquired, to any Constitutional Disease? (as Consumption, Rheumatism, Syphilis, Insanity.)	No.	

Had \$120,000 mostly paid up Policies, more or less broken—want to get into sound concerns.



11.

How long since you were successfully vaccinated ?

6 or 7 years.

12.

A. Describe fully your habit in regard to the personal use of alcoholic or other stimulants, narcotics and tobacco. B. What has been your habit in this respect through life ?

Temperate.

13.

How long is it since you were attended by a Physician or have professionally consulted one? For what Disease? Give the name and residence of that Physician? That of your usual Medical Adviser?

Never been sick to any extent since an adult.

14. State, so far as you know, what was the Age at Death, Cause of Death, Duration of Final Illness, and state of Previous Health of each of the following persons, if deceased? What is the Age and present State of Health of each of them, if now living?

	AGE IF LIVING.	CONDITION OF HEALTH.	AGE AT DEATH.	CAUSE OF DEATH.	HOW LONG SICK.	PREVIOUS HEALTH.
FATHER,			About 60.	Injury from lever producing inflammation.	2 years.	Good.
MOTHER,			About 35 to 37.	Consumption.	3 or 4 years.	Good.
BROTHERS,	22	Good.				
				Died in U. S. service.		
			About 22.	Caused by injury from cavalry charge.	Short.	Good.
SISTERS,	25	All.				
	to	"				
	33	Good.				
FATHER'S MOTHER,			About 80.	Old age.	"	"
FATHER'S FATHER,			" 90.	" "	"	"
MOTHER'S MOTHER,			" 70.	" "	"	"
MOTHER'S FATHER,			" 80.	" "	"	"

In giving the cause of death, avoid all indefinite terms, such as "General Debility," "Change of Life," "Fever," "Exposure," etc. If the word Childbirth be used, how long after delivery did death occur, and were there any symptoms of Disease of the Chest, such as Cough, Expectoration, etc.

15.

Have your Grandparents, or any of their descendants, died or suffered from Consumption, Scrofula, Insanity, Gout, Rheumatism, or any Pulmonary or Hereditary Disease? If so, what was the Age of such person at death? His or her Relationship to you? The Cause of Death? Answer in detail.

Mother, as stated.

16.

Is there anything, or has there ever been anything in your Physical Condition, Family or Personal History or Habits, tending to shorten your Life, which is not distinctly set forth above?

No.

[The following Declaration and Agreement must be signed by the person in whose favor a Policy is applied for and by the person whose life is proposed for Insurance ]

It is hereby declared and agreed that all the statements and answers to the printed questions written upon the forms A. and B. which, together with this Declaration and Agreement, constitute an application to THE MUTUAL LIFE INSURANCE COMPANY OF NEW-YORK, for an insurance of twenty-five thousand \$25,000 dollars upon the life of WALTON DWIGHT are offered to the said Company as a consideration of the contract applied for ; each of which statements and answers, whether written by his own hand or not, every person whose name is hereto subscribed adopts as his own, admits to be material, and warrants to be full, complete and true, and to be the only statements given to the Company in reply to its inquiries, and upon which, should the insurance applied for be granted, the Company's contract will be founded. And this application is submitted to the said Company, with the following express covenants and agreements : 1. That it will constitute no contract of insurance, until a Policy shall first have been issued and delivered by the said Company, and the first premium thereon actually paid, during the continuance of the life proposed for insurance, in the same condition of health as described in the application ; 2. That if the insurance applied for be granted by the Company, the Policy, if accepted, will be accepted subject to all the conditions and stipulations contained in the Policy, and that, in particular, no insurance shall be claimed to be thereby granted against death by self-destruction, nor shall any insurance thereby granted remain in force after health shall have been impaired by narcotics or alcoholic stimulants, or after the insured shall, without the consent of the Company in writing, travel, or engage in any of the occupations or employments, specified upon the Company's form of Policy ; and that the entire contract contained in the said Policy and in this application taken together shall be construed and interpreted, as a whole, and in each of its parts and obligations, of the contract being expressly agreed to be the principal office of the said Company in the City of New-York ; 3. That in any distribution of surplus, the principles and methods which may be adopted by the Company for such distribution, and its determination of the amount equitably belonging to such Policy, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under the contract now proposed.

Dated at Binghamton, N. Y., this

31st day of July, 1878.

}

In the presence of

D. P. JACKSON, M. D.

Medical Examiner.

A wife may sign by her husband, and children by their father, thus :  
Wife—Mary Smith, by John Smith.  
Children—Ellen Brown, Thomas Brown, by William Brown.

Signature of the applicant.

FRANK DWIGHT,

By WALTON DWIGHT.

Signature of the person proposed for Insurance, }

WALTON DWIGHT.

ALTERATION OF POLICIES.—Changes in the manner of paying premiums (as from yearly to half-yearly, or quarterly, or the reverse) can only be made at the end of a year, dating from the commencement of the Policy ; and when such a change is desired by a Policy-holder, the Policy must be forwarded to the office of the Company for the proper and requisite indorsement.

A change of interest in a Policy can only be made on the written request of the legal owner of the Policy, and with the consent of the Company. The dates of payment cannot be changed after a Policy has been issued, and the amount assured can only be increased (if desired) by a new Policy. The fiscal (or business) year of the Company closes on the 31st of December. A Policy issued in any year must be dated within that year ; it cannot be dated prior to the commencement, or subsequent to the close, of the fiscal year of the Company.

ASSIGNMENTS.—A wife cannot legally assign a Policy issued under the Married Woman's Act for the benefit of herself and children. But see Special Notice to Applicants and Policy-holders, as to Policies issued subsequent to June 23d, 1873, printed on outside page.

This Company will not take notice of any assignment of this Policy, until a duplicate or a certified copy thereof shall be delivered to the Company at its principal office ; and under no circumstances will the Company assume any responsibility for the validity of such assignment. If any claim be made under an assignment, proof of interest to the extent of the claim will be required.

EXTRA RATES.—Permits are required for travel or residence beyond the limits assigned in the Policy, and for hazardous occupations ; for which application must be made to the principal office. Extra rates, in such cases, are always charged as a percentage on the amount assured, and not on the amount of premium. An Extra Rate of  $\frac{1}{4}$  of 1 per cent. is charged on the lives of Females until one year after they shall have safely passed the climacteric.

RECEIPTS FOR PREMIUMS, to be valid, must be issued from the office and be signed by the President or Secretary.

see the color then? A. Yes, sir; I saw it on the ground as we were walking along.

Q. You didn't stop, did you? A. I don't remember that we stopped and stood and looked at it at all; I don't think we did, but there was enough of it so you could see it.

Q. So all you saw was the impression you got 331 when passing along on that occasion? A. Yes.

Q. Do you remember the color? A. I said it looked like fresh blood; it was red.

Q. Did you notice the shade of the red? A. No, sir; only it looked like blood, like pure blood; it came from his lungs or somewhere; it came from Dwight's mouth; I did not particularly notice anything in it particularly different from any other blood I saw.

Q. Was it different from the blood that comes out of a fellow's finger? A. Yes, sir; something like that.

Q. Is that as near as you can get at the color, 332 that it was about the color of the blood from a man's finger? A. It looked like bright blood.

Q. Was it such blood as oozes from a finger when cut? A. All I can say is it looked fresh blood that came from his lungs, and he spit it out.

Q. The question now is, whether the color you saw, so far as you are able to say, was about that which you had seen come out of a man's finger when he cuts it? A. I should think it was.

Q. It looked about like that? A. Yes, sir; like fresh blood; it looked like that as near as I can tell; I spoke about it at the time, and he said as I 333 have repeated; I told you before what I said about it; I spoke about it and he said he expected the thing would carry him off sometime.

Q. You said "the damned thing"? A. Yes, sir; but I didn't wish to use that expression until you pressed me to it.

Q. It was too wicked? A. I don't think it looked very well; I don't remember particularly what



all was said when he spit this blood, but he stated what I said, that he had had a hemorrhage ; I don't remember exactly what I said now.

Q. Can't you remember what you said as well as what he said ? A. I say I don't remember exactly  
334 all that transpired about it ; I don't remember the words that I said ; I don't remember all that transpired between us.

Q. Can you remember the substance of what you said about this spitting of blood ? A. I don't remember exactly what I said about it now.

Q. Is that the best answer you can make to the question ? A. I stated what he said about it.

Q. Who brought you up here ? A. There were some gentlemen up there a few weeks ago, to Williamsport, I don't remember their names. One gentleman sits there—and there were a couple of other gentlemen there, and they  
335 were up to take some testimony, and Mrs. Dwight was there, and they talked with me a little about it, and Dr. Doane talked with me about it.

Q. When did Dr. Doane speak to you about it ? A. About the time they came ; he talked to me about it ; he knew I knew about it ; he asked what I remembered about it, and I told him what I remembered about it.

Q. Did anybody make any bargain about your coming here ? A. No, sir.

Q. Have you any arrangement ? A. They came and gave me \$25 and wanted me to come with Dr. Doane and Mr. Bartles and Mr.  
336 Forsman and said they would pay my expenses ; the gentleman there (indicating) gave me the \$25 ; I don't remember names ; that was, I think, about three weeks ago ; two or three weeks ago.

Q. Do you remember Mrs. Herdic being examined as a witness there ? A. I know they examined her ; I was not present. I was then in Williamsport ; that lady is my wife. She and I were not boarding at the hotel, at the

time of the sickness. We lived in our private house, and lived together. She and Mrs. Dwight were great friends and were together a great deal; they were on most intimate terms. I have stated that I was there when he was sick; I don't think my wife was ever there when I was. I went in to see how he was, to get him off to Canada to make this payment; I don't know how often Mrs. Herdic was there. Mrs. Dwight and she were together a great deal. The other day when she was examined down there, I think I was in town; I was attending to my business; I was getting ready to attend to some matters. I am never in the house much. 337

Q. Are you able to give any further information as to what your business was at that time? A. Well, I don't know particularly that day, what I was doing. I had different things to attend to.

Q. What is your business now? A. I am buying some logs and attending to preparing to build a boom, and picking up some stock,—buying stock. That is what I have been at. 338

Q. Have you ever had any other business? A. Yes, sir. I have done some business.

Q. When last did you have any business before that, besides building the boom and buying stock? A. For the last five years I have been all over the country. I have been to London. I have not been in any particular business, not to be steady at any particular thing. I have been all over and all around the country.

Q. When last since you were born, did you have any other occupation? A. Well, I have had occupations, different kinds of business I have been at. 339

Q. When last since you were born, did you have any other occupation, excepting going to London and buying up logs and picking up cattle? A. I have most always been in the lumber business, and operating in different things, and I have

built gas works, and water works, and every thing of that kind.

Q. On what other occasion did you see any other spitting of blood by Dwight? A. Excepting on this occasion when he spit out on the ground, at one time, at his house when he was sick; that was  
340 in March, 1867. I think he had been spitting in a bowl while in bed, and the bowl was all bloody.

Q. Did you see him spit? A. Yes, sir; he spit in the washbowl; he spit in the spittoon or washbowl; I don't remember which it was.

Q. Can you tell one from the other? A. I don't remember; it was stained with blood.

Q. You think the spittle stuck fast to the vessel? A. He spit on it and it run down in the vessel, of course.

Q. Was there any way you could tell how much there was? A. No; at this time I didn't see a  
341 great deal; there wasn't any great quantity, probably two or three tea-spoonfuls of spit; I don't think I saw that but once in his room.

Q. Was there anything about the color of that by which you could tell? A. It looked like fresh blood.

Q. Such as you would see come from a man's finger if he should cut it? A. I don't say that; I said it looked like fresh blood; it was red color; it looked like blood as though your nose had bled or anything of that kind.

Q. Was there any other occasion? A. I don't remember that there was.

342 Q. Who was present when this spitting of blood occurred in the house? A. I don't know as there was any one there at that time; I sat in the chair and he was lying on the bed, and I was talking with him, and how he was, and whether he would get off at such a time to attend to this business, and we wanted Dr. Doane to go with him, and he said he didn't need him, he would go alone.

Q. Who wanted Dr. Doane to go with him?



A. I did, and a lot of those men who had an interest in the Canada lumber job. We had a hundred and fifty thousand dollars to pay before the 1st of April, or lose the purchase.

Q. You wanted Dwight to take the money up and pay it? A. Yes, sir; Dwight was the man to go. 343

Q. And you wanted Doane to go along; what for, to take care of the money, or of Dwight? A. We thought he ought to go with him, as he wasn't fit to go alone. No, Dwight didn't want him to go; he said he could go alone.

Q. Did Doane say anything about it? A. I don't know that he did, in particular.

Q. How soon after you saw Dwight there, did he start and go up to Canada? A. I think he went about the 26th of March; that was about a week or ten days after I saw him in the house there; I can't say positively whether he was undressed or not when I saw him; he was lying on the bed. 344

Q. Did you have any other conversation, at any other time, with Colonel Dwight, on this subject of going to make this payment? A. Why, certainly; we talked of it several times, and he had got to be there by the 1st of April, and he went; I think he was gone in the neighborhood of a couple of weeks; I don't remember exactly the time.

Q. When he came back did he go on with his business? A. Yes, sir; he went on and we raised the balance of the money and he carried the thing through. 345

Q. And he went back again? A. I think he only went to New-York the next time; he took a lot of money then.

*The Court.*—How long after the sickness was it?

A. He was gone about two weeks, I think, and we raised the balance of the money.

*By Mr. Russell :*

Q. How long was it after he was sick that he went to New-York the second time? A. I think the balance had to be paid the first of June, and he went there before that.

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CHARLES BARTLES, JR., called and sworn for the defendants, testified as follows :

*Examined by Mr. Larocque :*

I reside in Williamsport ; I am a lawyer ; I have resided in Williamsport since 1866 ; I have been engaged in the practice of the law since 1866 ; I knew Walton Dwight, late of Binghamton, in his lifetime ; I saw him in Williamsport during the  
 347 winter of 1866 and '7, and in the spring of 1867 ; my father had some business relations or negotiations with him at that time. My father and I went to the Herdic House and there had an interview with Colonel Dwight, at that time. As near as I can recollect, I should say it was the latter part of March or the latter part of April. I should think the latter part of April, I can't give the date exactly ; it was in March or April.

Q. What was the subject which took you and your father to meet Colonel Dwight on that occasion? A. The colonel wanted to sell him some  
 348 Canada Lumber stock ; and it was on that business we called upon him, my father and I ; he took my father and myself up in a room in the Herdic House.

Q. Did he assign any reason on that occasion why he wished to dispose of this interest in the Canada Lumber Company? A. Yes, sir ; he said he had had a lung difficulty and a hemorrhage and he had more stock than he could carry without borrow-

ing money, and he wasn't in a condition to borrow it, and he was offering for sale an interest to my father at that time ; the interview did not lead to a purchase by my father from him ; my father never became interested in the company, personally ; my father is not living now ; he died about four or five months ago. I saw Mr. Dwight quite frequently 349 during that winter or spring ; I had met him before this interview to which I refer.

Q. Did you ever see him spit or raise blood ?

A. I don't think I did, sir, I might have done so but I could not say positive.

Q. Did you ever hear him speak on any occasion, other than the one you have mentioned, of his having had any lung difficulty or hemorrhage ? A. No, I did not. That is the only occasion on which I heard him speak on that subject.

*Cross-examination by Mr. Smith :*

350

My age at that time was about twenty-four. I was just beginning practice of the law ; I was actively engaged in the practice of the law to the extent that any young man would be ; I was conversing with different people on different days.

Q. Did you have any interest in any one man's health more than another ? A. Yes, sir. I had no particular acquaintance with Dwight ; I knew him as being a citizen of the town and he lived in the Herdic House and I met him very frequently ; I don't know that I had anything more than a passing acquaintance ; I had no interest in his business 351 affairs.

Q. Had you any more interest in his health than in mine ? A. I don't know that I had.

Q. Can you recollect what any other man in the world said about his health, but Dwight ? A. Do you mean at that time, sir ?

Q. I mean at any time since the world was made ? A. I have heard several gentlemen speaking about

his health ; about his condition ; I heard Mr. R. M. Forsman.

Q. Was Forsman speaking about his, Forsman's, health ? A. That is not the question you asked me, believe.

Q. Do you remember of hearing any other person  
352 speak of his own health than Dwight ? A. I don't know that I have, sir.

Q. The only person in the world was Dwight ?  
A. On that day ?

Q. On any day since the world was made ?  
A. Oh, frequently, sir.

Q. Who ? A. I have heard my wife and I have heard my children.

Q. I mean outside of the family ? A. I don't know as I can recall any particular person.

Q. I want to know who A. Outside of my own family ; I have heard my father.

Q. I mean outside of your own family is there  
353 any person you can now name and give his residence that you have ever heard speak of his health excepting Walton Dwight ? A. Yes, sir ; I do remember somebody ; Vansickle was one gentleman ; that was perhaps two months ago.

Q. I mean 8 or 10 years ago ? A. Well, I can go back 4 or 5 years, I don't know as I can go back 10 years with any particular person.

Q. How long ago was this talk with Dwight ?  
A. It was in 1867 ; about 16 years ago.

Q. Is there any other man or any other person  
354 outside of your family, back 14 or 15 years ago, who said anything about his health, that you can now remember ? A. I don't know that there is.

Q. Dwight is the only man ? A. He is the only man I recollect of, and I have reason to recollect it, sir.

Q. Have you, sir ? A. Yes, sir.

Q. Have you the reason to recollect what any other man in the world said ? A. Oh, yes, sir.

Q. Can you remember the words Dwight used?  
A. Yes, sir, I think I can.

Q. The very words? A. I think so.

Q. Can you remember the conversation? A. Yes, sir.

Q. How long did it occupy? A. Perhaps 20  
minutes or half an hour. 355

Q. Do you mean to be understood by this jury, that you now remember the very words of that conversation? A. I remember most of them, sir. I don't remember every word or syllable he used.

Q. Who began the conversation? A. Col. Dwight.

Q. What was the first thing he said? A. He ordered up two bottles of wine.

Q. What did he say? Lay the wine out of your mind and answer the question. A. He said to father that he had retained an interest in this Canada Lumber Company for him, that he had retained an interest of ten thousand dollars in it  
for my father; I speak of my father as Mr. Bartles. 356

The counsel for the defendants, further to maintain and prove the said issues on their part, proceeded to read the depositions of witnesses examined under commission, as follows :

HORACE E. TAYLOR, produced as a witness for the defendants before the Commissioner at Williamsport, Pennsylvania, August 14th, 1883, being first duly sworn, testified as follows : 357

*Examined by Mr. Barlow :*

I reside at Williamsport, Pennsylvania; my age is fifty-six years; my occupation is that of special agent for fire insurance. Mrs. Dwight is the only one of the plaintiffs I know; I was acquainted with Walton Dwight, the husband of the plaintiff, Anna



N. Dwight ; I made his acquaintance in this city, [Williamsport] I think, in 1865 or 1866 ; I am not sure ; I lived in Williamsport during the entire years 1865, '6 and '7, and resided most of the time during those years in this hotel [Herdic House]. During the years above mentioned I saw Mr. and  
 358 Mrs. Dwight very frequently, right here at the same house ; I do not think they were here all the while during those years. During the time when they were in Williamsport, they were, as far as I know, boarding at this hotel ; I know where the rooms they occupied were located, but I am not sure about the number of the rooms. I have now been and looked at the rooms, and think they occupied numbers 20 and 22 on the second floor ; my wife and myself were frequently in their rooms ; there was only one room intervening.

Q. Please state whether or not said Walton  
 359 Dwight was ill and confined to his bed or rooms, in the Herdic House, during the period already mentioned ? A. I think he was ill for a few days ; I don't remember how long a time. The character of his illness, I understood, was hemorrhage of the lungs. I can only recollect that he had a hard cough ; he coughed as I do when I have a severe cold on my lungs.

Q. Did the coughing seem to give him pain ?  
 A. I don't recollect the particulars farther in relation to his cough. I do not remember that Walton Dwight, during these attacks of coughing, or either of them, or at any other time during his  
 360 stay in Williamsport, raised or spit blood in my presence. I think he mentioned to me, while he was recovering and before he was entirely well, on two or three occasions, that he had had a severe attack of hemorrhage of the lungs. It was here in this house, then called the Herdic House ; I would not undertake to give the exact words used on any of these occasions ; I can't say that at the time when Mr. Dwight made these statements to me he

expressed any fears as to the result of these attacks ; it was after the danger was over when I had the talk with him ; I don't remember particularly ; I only remember of his saying he had a pretty "close call," or something of that kind. I can't remember whether any one was present during any of these interviews with Dwight, when he spoke of his illness. I do not recollect that Anna N. Dwight at any time during her stay in Williamsport, or at any other time or place, made any statement to me or in my presence or hearing as to the nature or character of the illness from which Walton Dwight was then or had been suffering. I cannot positively say what physicians attended him then, but I think it was Dr. W. C. Doane. When Walton Dwight was ill in this hotel, he looked as though he had had a fit of sickness, and was very pale ; I don't remember anything further than his paleness especially ; my recollection is that he had a very severe cough for some time ; I could not give any definite time. My recollection is that it was for several weeks. At that time I had business interests in an enterprise in which Mr. Dwight was then engaged, and to which, according to my understanding, Mr. Dwight's personal attention was necessary. Mr. Dwight organized, with a number of other gentlemen, what was called "The Canada Lumber Company," I think. I was interested in it.

Q. Did that interest that you had in the enterprise, direct your attention to his personal condition—to Mr. Dwight's inability to attend to the matter—at that time? A. It probably did ; it probably impressed this sickness upon my mind more than it otherwise would.

Q. According to your best recollection now, how often did you see Mr. Dwight during that illness—as often as daily or otherwise? A. I think I saw him as often as daily ; my recollection is, he was not confined to his bed or room very long.

Q. Did you have any personal knowledge, at

that time, as to Mr. Dwight postponing a contemplated visit to Canada in consequence of his illness? A. I may have had that personal knowledge, but I do not now recollect it.

*Cross-examination by Mr. Smith :*

364

Q. How long ago was it that you last heard Dwight or his wife speak of his having any illness or other infirmities, including these answers you have stated here? A. I don't recollect of hearing anything after this; I am not positive whether it was 1865 or 1866, or 1867; it was fifteen or sixteen years ago, or from fifteen to eighteen.

365

Q. During this lapse of time have you had anything to aid your memory or enable you to speak upon this subject with more certainty than the other events of life? A. Yes, I think I have; no writing or any other business interest than that I have mentioned; I distinctly said before and I say now, I would not undertake now to testify to any expression used by Dwight, and give the very words that he used.

Q. Are you able to call to mind and specify and identify any circumstances or transactions of which you have already given testimony, when any living creature was present, except yourself and Dwight? A. I cannot; I do not know anything about the preparation of the questions which have been put to me here.

366

Q. During the period that they boarded in the same house with you, were you on terms of special personal intimacy with Dwight, and did this extend to your respective wives? A. They were personal friends, and warm personal friends, of ours; I passed Dr. W. C. Doane to-day; he was in the hotel yard as I passed by; I last had an opportunity to converse with him, about two or three weeks ago, when I was last home.

Q. If such a thing has occurred, when were you last interviewed upon the subject involved in this law-suit? A. I was spoken to about it, at the time I speak of, some two or three weeks ago; I don't remember the time.

Q. When last before? A. I was never spoken to until that time that I refer to, some three 367 weeks since; the subject was again referred to a few days later than that.

Q. Did you then undertake to impart to him what knowledge you had on this subject? A. No, sir; I merely answered two or three questions he asked, not knowing that it had any reference to this suit, or anything about it.

Q. Do you mean that the questions were so vague, that you did not know what they were about? A. No, sir; I do not mean that.

Q. You say you are at present special agent of fire insurance—for what company? A. 368 The Lancashire Insurance Company of England; that is the extent of my insurance business; I am doing some other general business.

Q. What do you mean by this term "special agent"? A. My business is superintending the agencies in this State and New Jersey, and settling losses.

Q. Was what you have said in reference to his sickness connected with the Canada affair, a great many years ago, and if so, how many? A. It was from fifteen to seventeen years ago.

Q. Have you any idea about the general character of that Canada transaction? A. It was a large 369 amount—some three hundred and fifty-six thousand acres, if I recollect right.

*Re-direct-examination by Mr. Barlow:*

Q. In answer to a question by Mr. Smith, as to whether you had anything to aid your memory or to enable you to speak upon this subject with mor

certainly than the other events of life, you say :  
 “ Yes, I think I have ; ” please explain exactly  
 your meaning ? A. Well, I think why that im-  
 pressed me more, I had been acting some time as  
 life insurance agent, and when I heard of Mr.  
 370 Dwight’s large insurance, it recalled that hemor-  
 rhage, and I presume that impressed it upon my  
 mind.

*Re-cross-examination by Mr. Smith :*

Q. I infer from your answer to the last question  
 that you have not disclosed the full extent of your  
 connection with what is called insurance : I wish  
 you would give the balance ? A. I was the agent  
 of the Charter Oak Life Insurance Company from  
 1855, the time I first came here, for about ten years,  
 and more or less, until the company got into dif-  
 371 ficulty ; and since that time somewhat in private  
 banking and fire insurance.

Q. How long ago was it that the circumstance of  
 this large insurance, that you speak of, came to  
 your knowledge ? A. It came to my knowledge at  
 the time of Colonel Dwight’s death ; I don’t re-  
 member how many years ago it was ; it was several  
 years ago.

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ANNA C. SPACKMAN, produced as a witness by  
 the defendants before the Commissioner at Strouds-  
 372 burg, Pennsylvania, August 17, 1883, being first  
 duly sworn, testified as follows :

*Examined by Mr. Magone.*

I am the widow of Henry S. Spackman ; he died  
 February 9th, 1875 ; I lived with my husband in  
 Williamsport three years, 1866, 1867 and 1868 ;  
 during the last two years and a half of that time



we made our home in Williamsport in the Herdic House ; I made the acquaintance of Mrs. Anna N. Dwight, the plaintiff in this suit, during the time that I resided in Williamsport ; I also made the acquaintance of Colonel Walton Dwight during my residence in the Herdic House in Williamsport ; Colonel Walton Dwight was out of health during that time. 373

Q. What knowledge have you of the ailment from which he was suffering by observation, or from anything that Colonel Dwight may have told you ?  
A. From observation, I saw after coughing, mucous raised streaked with blood ; he said he was spitting blood, after a severe cold ; to the best of my recollection his sickness was of short duration ; he said, in the presence of my husband and myself, once in my room, that some years previous in Michigan he had raised blood ; he said nothing as to the quantity ; as near as I can state, the year in which Colonel Dwight made the declaration as to the raising of blood in Michigan was 1867. 374

Q. What do you know of Colonel Dwight having a severe cough during any part of the time that you made your home at the Herdic House ? A. I simply know the fact that he had the cold. I reside now, near Dingman's Ferry, Pike County.

*Cross-examination by Mr. Smith :*

According to my best knowledge, it is considered twenty-five miles from the station here to Dingman's Ferry ; my home is about four miles this side from Dingman's Ferry, on a farm ; that is the nearest village. I recognize that young man (indicating) ; he is my nephew, William Kingston ; he resides at Germantown near Philadelphia ; his father's name was Stephen B. Kingston, he is dead ; he is in the Pennsylvania Railroad office, 243 South Fourth street, Philadelphia. 375

Q. If he did, when was it that he last spoke to

you upon the subject matter of this examination ?  
 A. I do not know that he spoke to me at all about it.

376 Q. From what place, at which you were stopping, did you come here ? A. From the Park Hotel, Williamsport. I left there at seven fifty-five yesterday morning, and reached Stroudsburg at three thirteen, yesterday afternoon; when I left Williamsport, I was aware that a gentleman from New-York, by the name of Barlow, and a gentleman from Ogdensburgh, by the name of Magone, were seeking me to take my testimony in this matter; that was communicated to me by Mr. Dixon, who sits there (indicating); he said he was from New-York; it was at Williamsport that he first spoke with me; that was Wednesday night, about eight o'clock; as nearly as I can state the hour when I arrived at Williamsport was about half past seven; I came there from Philadelphia, Pennsylvania.

377 Q. Did any one communicate with you shortly prior to your leaving that place, and if so, who was it ? A. No, I had no communication on this subject.

Q. Did any one from New-York or Ogdensburgh communicate with you in any way, shortly prior to your leaving Philadelphia for Williamsport ?  
 A. Yes; it was through M. P. Stack.

378 Q. Can you answer that more fully ? A. I do not see that I can; the full name of Mr. Stack is Michael P. Stack; I do not know that I can give his residence, he is travelling so from place to place.

Q. If he ever had an abiding place, to your knowledge, where was the last one ? A. He was tutor to my children for three years, and made his residence at my house ; that was in 1879, 1880 and 1881; that was the last place of residence that he had to my knowledge. I do not know where he is now; on Tuesday of this week

the communication was made to me that led to my going to Williamsport; the communication was by Michael P. Stack, in Philadelphia.

Q. Did you understand that he was communicating with you in the interest of these insurance companies, or of the Germania Insurance Company? 379

A. I think not. I left Philadelphia Wednesday of this week. Between the time Mr. Stack saw me on Tuesday, and my leaving Philadelphia on Wednesday, nobody communicated with me on the subject of my going to Williamsport; the idea of my going to Williamsport was first suggested on Tuesday of this week by Mr. Stack; I knew on Monday the object of my going to Williamsport; I learned that from Mr. Stack; he came then from Stamford, Connecticut; he then went to the Delaware Water Gap, the last I know of; to the Water Gap it is about five miles, I think; I suppose pleasure was the subject of Mr. Stack's going to the Water Gap; 380 I can't say anything else; I do not know where he is now; I can give no further information; my nephew, of whom I have spoken, accompanied me to Williamsport from Philadelphia; I went to Philadelphia Friday last from my home.

Q. Prior to the commencement of this examination, or you may say prior to to-day, who last communicated with you in reference to it, or the subject matter thereof? A. I should think Mr. Dixon, at the Park Hotel, on my arrival at Williamsport; he came here with my nephew and me on the same train; my nephew accompanied me from Philadelphia to Williamsport. 381

Q. Do you know by whom the arrangement was brought about by which this journey, in this way, was to be performed? A. I understood from the agent of the insurance companies, in New-York; and I came because I knew I had to, and I wanted to get rid of it.

Q. Was that Monday the first that you learned

that they were desiring to get your testimony?  
A. It was not.

Q. Who next before gave any knowledge to you upon that subject? A. A man from Williamsport, named Doane; W. C. Doane, a homœopathic physician.  
382 He called about a month since, at my house, near Dingman's Ferry, where I have lived for seven years; he did not have any other business with me than as to my giving testimony upon the subject matter to which this examination relates; a driver or coachman was with him, no one else; I did not see that he had a book with him; I saw him but two minutes; it was very short; I saw one paper that he had; he told me the nature of the paper; he said it was the deposition of Mrs. Herdic; he gave me the nature of it; he did not read it; I left the room; he said it was Mrs. Herdic's deposition; I only know from  
383 what he said; he did not give any reason for stating to me what Mrs. Herdic's deposition was; from Williamsport I moved to Philadelphia; there my husband died.

*Re-direct-examination by Mr. Magone:*

My husband was chaplain of the Episcopal Hospital at Philadelphia.

Q. Was he an Episcopal clergyman during his professional life? A. He was, the last years of it.

*Re-cross-examination by Mr. Smith:*

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Q. Who was it who communicated with you, that led to the arrangement of your coming here?

A. I answered the question before; Mr. Stack, on Tuesday morning last; I understood from him, then, that I was coming on the side of a party in a lawsuit; that party was the insurance companies.

Q. Whose letter was that to which you have referred? A. I referred to no letter in evidence; I re-

fer to the letter from the agent of the insurance companies in New-York ; I do not remember the name ; it was Brownson, or some such name.

Q. Who gave you, or exhibited the letter to you ?

A. I think this is the third time I have answered that question ; it was Mr. Stack, on Tuesday morning, in Philadelphia.

385

Q. What has become of it ? A. As the letter was not addressed to me, I know nothing of its whereabouts.

Q. Is Mr. Stack another one connected with the life insurance business, or has he been ? A. Not to my knowledge.

It is conceded that proper notice to produce all licenses granted to Dwight during the years 1874, 1875 and 1876, if those are the dates, either by the Board of Excise of Binghamton, or the United States International Revenue officers, has been served on the plaintiffs, and they answer that they find no such paper.

386

OWEN J. COUGHLIN, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I am the clerk of the Board of Excise of Binghamton ; I have the records of the Board here ; on May 14, 1875, a State hotel license was granted to Walton Dwight, on Mr. Dwight's own application ; on the 20th of May, 1876, he was again granted a tavern, innkeeper's license to sell liquors and ales ; on May 14, 1874, he was granted a hotel keeper's license on his own application ; it was the ordinary hotel or innkeeper's license.

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BENJAMIN DEVOR, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside at Binghamton ; my office is that of  
 388 Deputy Collector of Internal Revenue ; I was Revenue Collector of the Central States in 1874, 1875 and 1876.

Q. Do you know whether licenses were granted through your office, under the laws of the United States, to Walton Dwight, in those years, or either of them, for the sale of liquors ? A. They are not licenses.

Q. Whether the revenue tax was paid by Mr. Dwight for the sale of liquors at the Dwight House ? A. Yes, sir.

*By the Court :*

389 Q. During what years do you say ? A. 1874, 1875 and 1876.

*By Mr. Larocque :*

Q. He paid a special tax for selling wines, liquors and cigars at the Dwight House ? A. Yes, sir ; he did.

Q. Did you visit the Dwight House from time to time during those years ? A. I was there occasionally.

Q. Mr. Dwight was the proprietor of that  
 390 house ? A. I so understood it.

Q. What was the fact as to there being wines and liquors for sale at the Dwight House during those times ? A. I couldn't tell you, sir ; I have no knowledge upon that subject.

JOHN H. ARMSTRONG, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in Binghamton at present ; I am at present head waiter at the Hotel Bennett ; I was employed at the Dwight House by the late Col. Walton Dwight from May 1st, 1874, until March 6th or 10th, 1877, I think it was ; I was with him so long as the hotel was open ; I had charge of the omnibus running to the depot—porter. 391

Q. Was there a wine room kept in the Dwight House at that time ? A. There was.

Q. Were wines and liquors sold there in bottles ? A. Yes, sir.

Q. Were they furnished guests upon call ? A. Yes, sir.

Q. (Bottle handed witness.) Look at the bottle I now show you, and tell me whether that was the description of bottles kept in that wine room that were used there, and is that one of such bottles ? A. Yes, sir. 392

The bottle referred to bore upon its face a shield with the words, "Dwight House, Binghamton," stamped upon it ; it was made an exhibit in the cause and marked Number 16.

Q. These bottles were made for the Dwight House, at that time, in various sizes ? A. Yes, sir.

Q. Half pints, pints, quarts and so on ? A. Yes ; quarts, I believe, was the highest.

Q. And was that business of selling wines and liquors put up in packages of that kind conducted at the Dwight House during the whole time of your connection with it ? A. Yes, sir. 393

*Cross-examined by Mr. Newton :*

Q. This wine cellar was the only place where there were any bottles of wine kept that you know of,

wasn't it? A. Yes, sir; that's all. There was no bar in that house; no persons came there to drink at the bar or anything of that kind.

Q. These bottles of wine, I suppose, were placed upon the dining table when called for, weren't they? A. Yes, sir.

394 Q. And only to guests of the house? A. Yes, guests of the house.

*Re-direct-examination by Mr. Larocque :*

Q. Do you mean to say that nobody could buy a bottle of wine or liquor in that wine room except a guest of the hotel? A. I never saw any sold there.

Q. Your business was going back and forth with the omnibus? A. Yes, sir.

Q. Weren't they sent to the rooms of guests in the hotel? A. Yes, sir; if they wished.

Q. You didn't scrutinize who drank them? A.  
395 No, sir; I didn't.

The counsel for the defendants then proceeded to read from the examination of Walton Dwight, taken in his bankruptcy proceedings and subscribed by him, produced from the files of the Clerk of the District Court of the United States for the Northern District of New-York.

The examination is headed "U. S. District Court for the Northern District of New-York, In the matter of Walton Dwight, bankrupt. Examination before Hon. L. E. Bowe, one of the Registers in Bankruptcy, at Binghamton, N. Y., Dec. 18, 1877. Appearances for the opposing creditors, Hotchkiss & Millard; for the bankrupt, Chapman & Lyon and Neri Pine."

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It is admitted by all parties that the petition in the matter upon which the bankruptcy was adjudicated, was filed April 18, 1877.

The examination was commenced on the 18th of

December, 1877. At page 30, as contained in the book, it reads as follows :

“ I think I opened the Dwight House in May, 1874, or rather, I furnished part of it then and run it partly as a hotel, and rented part of it in the spring of 1875 ; we furnished the balance of it and rented it for about three years as a hotel. The only business I had was the Dwight House business and livery. The other business was my wife’s business, although I had always kept it as my own account and run it without being particular to keep any account of the Dwight House or my business. When I opened the Dwight House, I intended it for a summer resort ; it was kept open the year around, but I relied more upon the summer custom ; the park was used in connection with the Dwight House, and cottages, in fact the whole city had the use of it. I kept no open bar ; liquors were sold in packages ; I should think I had some two or three thousand dollars worth of stock when I opened the house ; the stock was larger then than at any time afterward ; that included cigars ; I took out of my private house some six or seven hundred dollars’ worth of liquors that were not invoiced ; I kept wines, liquors and cigars all through my business. These were bought at different places. I cannot state the amount of business per annum ; the books will show ; it was somewhere in the neighborhood of \$25,000 or \$30,000 a year ; that is the first year. Then it keeps running down. I used every dollar of the money received from this sale of the Pennsylvania land.”

At page 43. “ Q. Did you have an account of the wines and liquors ? A. Yes, sir. Q. When does it commence ? A. It commences June 1, 1874, on page 80, and continues to July 31, 1875. Q. Was that a part of the Dwight House business ? A. Yes, sir. Q. Does the ledger account show the condition of this after this date ? A. It does not. Q. Where upon your books does it show the amount of prop-

erty you had in the Dwight House business at the outset? A. It don't appear on the book, but we have got it in the bundle of bills. Q. Have you any books showing it? A. We never charged it on books at all; it never was entered on a book."

400 At page 111. "Q. Had you, at the First National Bank, from this time, a bank account in your own name? A. Yes, sir. Q. You say that bank account was really your wife's bank account? A. It was. Q. It was her property that went in there? A. I acted as her agent, with full power. Q. You speak of that account as one of your accounts? A. I say the Dwight House was the only business I had as a regular business."

At page 135, under date of Feb. 1, 1878: "Examination continued. Examined by Mr. Millard. Q. When did the Dwight House open? A. It opened in 1874; the 26th of May, I think. Q. And closed  
401 when? A. It closed the 8th day of March, 1877?"

At page 69. "Q. I understand you made your settlement on your wife about when? A. It was done in the latter part of June or July, 1868. Q. From that time down to the time of the commencement of the Dwight House business, had you any business of your own? A. I had not; not further than my law suits, general living, and the like of that. I had no business of my own."

At page 95. "Q. In this connection I want to call your attention to your letter of the 9th of July, to Harper Dusenbury, written from Chicago; the counsel asked you to explain what there was  
402 about what you stated in there about the chattel mortgage being given, when you were a bankrupt? A. In the first place, I had offered this interest in my father's estate to the bank, and they declined taking it; then I offered it to Dusenbury, and he declined taking it; then I offered it to my brother Ward, and sold him my interest in the estate for \$5,000 or thereabouts, with the right of redemption by paying this amount and interest with-



in three years time. I think it ran along until the fall of 1876; I think it was along in the fall of that year I made a further arrangement with Ward; I said to him 'I will withdraw my right of redemption in this estate, provided you will advance to my wife and boy, for living purposes, a sum not to exceed \$5,000, and you shall advance that at the rate of a thousand dollars a year for five years or thereabouts, or until such time as I could start in business again, and can shift for myself. This arrangement was a verbal arrangement, and Dusenbury knew of it at the time. Things run along for a while, and Dusenbury got this judgment, and instituted supplementary proceedings, and had a Receiver appointed and turned me out of doors. After that I went to Chicago, and tried to do something for myself, and I received a notice in July to the effect that Dusenbury was about to sell the equity interest in this estate, thereby sweeping the last plank from under me. I had felt all the while before then that my wife had something to fall back upon, provided the bank and Dusenbury did not seize this little amount, and when Dusenbury took that and sold it, I was furious, as any man would be. At that time I believed that any paper, or note or payment of any kind, given for four months before I was adjudicated a bankrupt, was of no value whatever to the party receiving it at that time. I believed that Dusenbury had received such a paper, and I sat down and wrote that letter. I said to him if he proposed to knock the last plank from under me, I would, if possible, throw that into the hands of the assignee, so he would not have the benefit of it. I wrote that letter with the idea that any paper got four months before I was declared a bankrupt, was of no value to the person receiving it, and I wrote to Mr. Dusenbury just what I thought. I came home, and soon found this mortgage of January 10th was a renewal of the February mortgage,

and that it covered the same property, and was not a preference, and that I could not move on him. When I wrote that letter I meant every word I said, but I found out it was a renewal of the security, and not a preference, within the meaning of the law.

406 Q. I will ask as to the effect this proceeding of Dusenbury's had upon you, by which he took possession of the hotel, and went on and sold it; did it make you sick? A. I was very sick.

Q. You were taken away from the hotel in a carriage? A. Yes, sir.

Q. You didn't get out for a long time afterward? A. It was just like killing me, and I felt as though I was sold out by everybody and everything."

At page 81: "How much money did you take away from the Dwight House? A. I can swear I 407 took less than eight dollars and my wife told me she had less than two dollars, and that is every dollar I had on the face of the earth, that I know of; I know I borrowed money right along from my brother Ward to pay my hotel bills at the Spaulding House."

At page 11: "Letter from Walton Dwight to Abel Bennett offered in evidence and marked Exhibit 1, of this date. Also statement with three sheets attached, of which this is a copy:

"BINGHAMTON, N. Y., December 15th, 1876.

408 "To Hon. ABEL BENNETT,  
"President of the First National Bank  
of Binghamton, N. Y.

"My Dear Sir.—I enclose you schedule and summary of facts as I understand them, and proposition for the disposition of such matters as exist between the First National Bank, Harper Dusenbury, Walton Dwight, Anna N. Dwight and George B. Edwards. I enclose you two letters by insurance

companies, and have been informed by the officers of other companies that similar action will be taken by them. You will see that it is of the utmost importance that immediate action is taken by your bank. Trusting that I will be informed of the result at an early day, I am, very truly,

"Your obedient servant,

409

"WALTON DWIGHT."

(Following this was a duplicate of the schedule annexed to the letter. See appendix—Exhibit L.)

At page 115. "Schedule of property in Dwight Place and elsewhere, in the hands of Walton Dwight, with estimates of the present cash value, December 1st, 1876."

At page 13, at the foot of that schedule, the words "total assets carried out. . . . . \$240,000."

"Indebtedness by first and chattel mortgages, covering all items, carried out in the foregoing schedule."

410

At page 14, at the close of this schedule, the words, "total amount of security indebtedness, \$240,050."

Schedule "C" follows, entitled "Summary," and shows what the property referred to in the former schedule would produce in the way of rent for the coming year, if all occupied; the total of that schedule is \$15,000. "The only other property that earns anything mentioned in the schedules "A" and "B," is the Binghamton "Daily Times." This, thus far, has not been self-sustaining. For some time the rentals will be the entire income.

411

This will rather fall below than overrun the \$15,000 per annum. The interest on the security indebtedness at seven per cent. would be sixteen thousand six hundred and fifty dollars per annum. The annual taxes on an assessment of \$150,000, on Binghamton real estate, will amount to about one and one-half per cent., or twenty-two hundred dollars per annum. Insurance on \$100,000 dwelling,  $\frac{1}{4}$  of 1 per

- cent. per annum, or \$250 ; on Dwight House,  $1\frac{1}{2}$  per cent. per annum, \$750 ; wear and tear, as per schedules "A" and "B," on \$170,000, improved property, not less than  $1\frac{1}{2}$  per cent. per annum, \$2,550. (Note.—For the past two years it has averaged over 2 per cent.) Cost of renting and making the leases, 312 collecting and general taking care of the property, 1 per cent. per annum on \$150,000, \$1,500. Taxes on Western land, about \$700 per annum. Total, \$24,610. There will necessarily be an annual expenditure above the income, of about \$10,000 per year, for some time to come. This does not include taxes on Canada stock, which amounts to about \$12,000 per annum. This annual deficit of \$10,000 per year, added to the schedule value for three years, would make the property stand in the sum of \$270,000, an amount quite as large as the property will bring, judging from the present business outlook."
- 413 From page 31. "It cost me considerable to live. My living expenses were over \$18,000 one year. That money that was received from Pennsylvania and the \$58,000 received from the insurance on my house that was burned, I should think the most of it was used in building up Dwight Place. The most of it went that way, excepting that we spent and used up as we went along. I don't remember of any other source I received any money from about that time. I didn't get anything out of the Williamsport and Canada Lumber Company, only it went the other way ; I sold that property to the Williamsport and Canada Lumber Company 414 for \$300,000, cash, just what it cost me, and a certain portion of \$100,000 worth of stock, which was divided up among the stockholders, *pro rata*, I did not realize anything out of the transaction ; I sold some of the stock and realized something, I don't recollect how much ; I sold some of the stock for what it cost me, and some I sold at an advance ; I did not make but very little out of the transac-

tion ; I must have sold and realized, out of the stock subscribed for, something like \$100,000 ; so far as I was concerned, I made nothing out of the company transaction."

At page 6. "Q. If you are on the bonds accompanying the insurance mortgages, is your liability on those bonds included in the statement you made the other day ? 415

Objected to as speculative, and as assuming a liability not proved.

A. I don't know whether it is or not ; the statement itself will show ; I don't think I included it the other day ; that is my recollection of it ; I stated I was indebted to my wife, the other day ; I did not give my wife anything to show for this \$50,000, I did not give her any notes ; there was no memorandum made of it at the time or since ; this \$150,000 derived from the insurance companies was received from bonds and mortgages given on the Dwight property here in this city ; the title, at that time, was in my wife ; my recollection is that the title has been in her since 1868 or '69—somewhere thereabouts, that is, the most of it was in her name at that time ; it was conveyed to her by Lewis Seymour ; it was conveyed to Lewis Seymour by myself ; it was conveyed for one dollar and other valuable considerations ; I think that is the wording of the conveyance ; I wished to convey this property to my wife, and I got Lewis Seymour to do it, and I presume it was done in a legal way ; the consideration was one dollar from me to Seymour, and one dollar to my wife, I think, was part of the consideration, and other valuable considerations, love and affection, if you choose to call it ; it is my recollection that I conveyed other property to her at that same time, or about that same time ; I don't know whether it was done in the same way or not ; I sold that Canada stock to Walker, and 416 417



Walker conveyed it to my wife ; it would be in the same way a settlement ; the Pennsylvania lands were conveyed at the same time ; my wife sold the Wisconsin land to Dodge ; all this property that was in my wife's name was conveyed to her through third parties, somewhere about that time ; it was a  
 418 settlement on my wife."

" *Northern District of New-York*, ss. :

" On the 19th of February, A.D. 1878, appeared personally Walton Dwight, the above named witness, before me, and was duly sworn to the foregoing statement subscribed by him. L. E. BOWE, Register in Bankruptcy."

The counsel for the defendants then read in evidence the creditors' petition in said involuntary bankruptcy proceedings, filed April 7, 1877, at 9 A. M., entitled, "No. 5377. U. S. District Court,  
 419 Northern District of New York, in Bankruptcy. In the matter of Walton Dwight to be declared a bankrupt. Petition and proof of debts. Neri Pine, solicitor for petitioners, Binghamton, New-York. Filed April 7, 1877, at 9 A. M."

The petition is addressed to the Hon. William J. Wallace, Judge of the District Court of the United States for the Northern District of New-York. The petitioners are Anna N. Dwight, David L. Brownson and George B. Edwards of the City of Binghamton, county of Broome and State of New-York. The demand of the petitioner, Anna N. Dwight, is  
 420 stated to be upon thirteen separate and several promissory notes of the said Walton Dwight, the sum and amount of which is more particularly set forth in the proof of debt hereto annexed, and amounting in the aggregate to the sum of \$75,000 and interest accrued since the date of protest of the several notes therein set forth. The demand of the petitioner, David L. Brownson, being on an account

for goods, wares and merchandise, to wit : groceries and provisions, sold and delivered to said Walton Dwight at his request by your petitioner, amounting in the aggregate to the sum of \$261.88. The demand of the petitioner, George B. Edwards, being for work, labor and services performed by your petitioner for said Walton Dwight at his request, and amounting to the sum of \$300.00. 421

The act of bankruptcy alleged is the following :  
 “ On the 10th day of January, 1877, being bankrupt or insolvent, or in contemplation of bankruptcy, or insolvency, of making to Harper Dusenbury, of Binghamton, in the county of Broome and State of New-York, a payment or conveyance to the said Harper Dusenbury, who is liable for him as endorser, of all the personal property, goods and chattels of the said Walton Dwight, with the intent by the said conveyance to give a preference to the said Harper Dusenbury, or with the intent by such disposition of his property, to defeat or delay the operation of said act. That said Walton Dwight, within the period aforesaid, and within said district, to wit : At the city of Binghamton and county of Broome and State of New-York, has been arrested and held to bail under mesne process, issued out of the Supreme Court of the State of New-York, within which State such debtor resides, or has property, founded upon a demand, in its nature provable against the bankrupt estate under said act, and for a sum exceeding \$100 and that such process is remaining in force and not discharged by payment or in any manner provided by the laws of such State, applicable thereto, for the period of seven days. That said Walton Dwight, within the period aforesaid, and within said district, to wit : At the city of Binghamton and county of Broome and State of New-York, being bankrupt or insolvent, did procure or suffer his property to be taken on legal process in favor of E. A. Clark, and did suffer and permit such proceedings to be taken there- 422 423

under; that in compliance with the laws of the State of New-York, in such case made and provided, a Receiver of all the goods, chattels and credits of the said Walton Dwight was appointed, and that said Receiver has taken and now has possession of all the real and personal estate of the

424 said Walton Dwight, and that said proceedings were taken with the intent to delay the creditors of him, the said Walton Dwight, or with the intent to defeat or delay the operation of said bankruptcy act. And your petitioners further represent that your petitioners constitute one-fourth in number of the creditors of the said Walton Dwight, whose claims exceed \$250,000, and are provable against the said Walton Dwight, in bankruptcy, and that the sum of indebtedness of the said Walton Dwight to your petitioners constitutes one-third of the indebtedness of the said Walton Dwight, and provable against

425 him in bankruptcy. Wherefore, your petitioners pray that he, the said Walton Dwight, may be declared a bankrupt, and that a warrant may be issued to take possession of his estate; that the same may be distributed according to law, and that such further proceedings may be had thereon as the law in such cases prescribes.

ANNA N. DWIGHT,  
 (Signed) GEORGE B. EDWARDS,  
 D. L. BROWNSON.

U. S. OF AMERICA, }  
*Northern District of New York,* } ss.:

426 We, ANNA N. DWIGHT, GEORGE B. EDWARDS and D. L. BROWNSON, the petitioners above named, each for himself, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by us, are true so far as the same are stated of our own knowledge, and that those matters which are stated therein on information and

belief, are true, according to the best of our knowledge, information and belief.

(Signed) ANNA N. DWIGHT,  
GEORGE B. EDWARDS,  
D. L. BROWNSON.

Subscribed and sworn before me, this } 427  
4th day of April, A. D., 1877. }

CHARLES L. HALL,  
*U. S. Commissioner,*  
Northern District of New York.

NERI PINE,  
*Solicitor for Petitioner,*  
Binghamton, N. Y."

Schedules follow.

The counsel for the defendants then read in evidence the original adjudication of bankruptcy in the matter of Walton Dwight, filed May 7, 1877. 428  
It is dated May 1, 1877, and is substantially as follows :

"The cause came on to be tried at the city of Syracuse, in said Court, and due proof having been made of the service of the copy of an order to show cause, and the copy of petition herein mentioned, five days prior thereto, and thereupon, upon consideration of the proofs in said cause, it was found that the facts set forth in said petition were true, and it is therefore adjudged, on motion of Mr. Pine, the counsel for petitioner, that Walton Dwight became bankrupt within the true intent and meaning of the act entitled, 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved March 2, 1867, and the several amendments thereof, and acts supplementary thereto, before the filing of said petition ; and he is, therefore, declared and adjudged a bankrupt accordingly." 429

The order further directs the bankrupt to deliver

to the Marshal, as messenger, within five days after notice, a schedule and inventory, and refers the petition to Leroy E. Bowe, register in bankruptcy.

430 The counsel for the defendants also read in evidence the "Memorandum of first meeting of creditors, order appointing the assignee, and approval thereof, in the case of Walton Dwight, bankrupt."

It was admitted that assignees were appointed, and that the meeting was held on the 7th of June, before Mr. Bowe, and that Charles A. Hull and E. M. Fitzgerald of Binghamton, were appointed assignees.

431 The counsel for the defendants also read in evidence, the amended schedule in the matter of Walton Dwight, a bankrupt, filed on March 8, 1878. The first page following the title is as follows :

*"To the District Court of the United States, for the Northern District of New York :*

I, WALTON DWIGHT, the above named bankrupt, hereby petition said Court, to be allowed to amend his schedules in the above matter as the original statement to the Marshal was not made conformable to the requirements of the rules of this Court, as your petitioner is informed, and that the same was hastily made, originally from  
432 the data before him and by examining a large mass of books and papers, he has been enabled to perfect the said schedule, and prays he may be allowed to file his amended schedule herein, which is hereby annexed.

OTEGO, Feb. 19, 1878.

WALTON DWIGHT."

Then follow the ordinary bankrupt's schedule as



amended, *In Schedule A*, under the head of "*Debts due to the State of New York for taxes and assessments under the laws of said State*," is the statement: "The property in Dwight Place had all been assessed to me. All taxes since June, 1876, are unpaid by me; amounts I cannot give."

*In schedule "B," first as to books*—433  
All the books are now in the hands of the assignee, and am advised that all accounts were sold by the Receiver, George N. Dunn. Next as to *deeds*:—Deed from John G. McDonald, as trustee of A. G. P. Dodge, dated May 25th, 1875, and from Charles T. Hall, dated June 12th, 1873; deed from Frederick N. Smith and wife, dated July 5th, 1873; deed from Frederick Lewis and wife, dated September 16th, 1877; deed from James Neugent, dated ————  
No papers of value, large amount of cancelled checks and notes are on hand, but do not understand they are of any use or value." This schedule purports to have been verified before Register 434  
Bowe, on the 18th of February.

*Schedule B*, under form 5. *Property claimed to be excepted from the operations of this Act and which may be set apart*. The Bankrupt states that he has no property claimed as exempt, except clothing for self, wife and child, and watch and chain, all of the estimated value of five hundred and fifty dollars. As to *interests in land*, none; *personal property*, none; *property in money, stocks, shares, bonds, annuities, etc., etc.*, none; *rights and powers*, none; *property heretofore conveyed for benefit of creditors*, none; *what portion of debtor's property has been conveyed by deed, assignment or otherwise, for benefit of creditors, date and name*, none,—except by way of incumbrances as stated in B, 1. Chattel mortgages on personal property in hotel, which has been foreclosed and the property sold; amount realized about thirty-three thousand dollars. *Debts due to petitioner on open account*, none; *stocks in incorporated companies and interest* 435

- in joint stock companies*--three hundred shares in the Williamsport and Canada Company, par value, fifteen thousand dollars, no market value, and now pledged with Cummings, Allen & Comly, of Williamsport, Pa., to secure indebtedness to them of ten thousand dollars for legal services, if not
- 436 already sold under power of attorney; two hundred and eighty-three shares of stock in the Independent Sewing Machine Company of Binghamton, N. Y., no value, as the company is broken up and stock worthless. *Policies of Insurance*, none. *Unliquidated claims of every nature, with their estimated value*, none. *Cash on hand*, none. *Bills of exchange, promissory notes and securities of any description, each to be set out separately*; all under this head were delivered to George W. Dunn, as Receiver, appointed by the Supreme Court of the State of New York, in an action of
- 437 Egbert A. Clarke against Walton Dwight and others, before the filing of the petition in bankruptcy. *Stock in trade in my business*, hotel keeper at Binghamton, of the value of--same as B." "*Household goods and furniture*, were all covered by two chattel mortgages to Harper Dusenbury--one of the date of February 28th, 1876, and the second in renewal of the first on the same property, Jan. 10, 1877, to secure him for indorsements. All the property covered by these was taken by him before the filing of petition. *Household stores* were taken same as above. *Wearing apparel* included common apparel for self, wife and child, five hundred dollars; watch and chain, fifty dollars.
- 438 *Books, prints and pictures* sold same as above. *Horses, cows, sheep and animals*, all sold same as above. *Carriages and other vehicles* sold same as above. *Farming stock and implements of husbandry*, had none. *Shipping and shares in vessels*, none. *Machinery fixtures and apparatus used in business, with the place where each is situated*, sold under chattel mortgage same as B. *Goods of per-*

*sonal property of any other description, with the place where each is situated, know of none not above covered."*

Then follows *a statement of all real estate now in the possession, enjoyment or under the control of Wallon Dwight, bankrupt, or which is held by any other person in trust, for his use, or to the possession or the enjoyment of which he was entitled at the date of filing the petition, with a particular description of the interest of Dwight,* followed by a list of various sections of land in Wisconsin, covering several pages. At the end of that description follows this: "All the said tracts or parcels of land in the aggregate of about ten thousand two hundred and ninety-one forty five hundredths acres of land being the premises conveyed to Walton Dwight by John J. McDonald, Trustee, by deed, recorded in the Register's Office of Oconto County, June 28, 1875, volume 24, pages 527, &c. Estimated value of above, fifty thousand dollars, if forced to immediate sale. Encumbrances on the above described premises are as follows: A mortgage for sixty thousand dollars, dated Jan. 1, 1869, given by Anson G. P. Dodge to Anna N. Dwight, and by said Anna N. Dwight assigned to Harper Dusenbury; also another mortgage from Dwight to Dusenbury, given about February 12th, 1876, to secure Dusenbury for his liability as endorser; also a mortgage to the First National Bank of Binghamton, N. Y., given by said Walton Dwight, about Feb. 12th, 1876, to secure said bank for notes made and endorsed by said Walton Dwight; also an assignment from Walton Dwight and wife to the First National Bank, dated January 18th, 1876, of the original patents for the land. Then follows a description of a certain tract of land in Binghamton, the estimated value of which is stated to be \$2,000; encumbrances as follows: a mortgage from Walton Dwight to Charles T. Hall for \$3,000, to secure the payment of the purchase money of

442 said premises ; also a mortgage to First National Bank of Binghamton, given February 12th, 1876, to secure said bank for notes made or endorsed by Dwight. Then follows a description of another parcel of land in Binghamton, the estimated value of which is stated to be \$1,000, the encumbrances on which are stated to be a mortgage for \$2,000 to Frederick W. Smith, dated July 15, 1873, given to secure the purchase money ; also a mortgage to the First National Bank (same mortgage as formerly described) ; another parcel of land in Binghamton, the estimated value of which is stated to be \$1, and on which it appears there are no incumbrances. Also, the undivided half of certain premises in Washington County, Ohio ; the estimated value is said to be one hundred and fifty dollars ; the statement is added, that it is not incumbered unless by claims for taxes, or has been sold at Receiver's  
443 sale.

The last page of these papers reads :

“U. S. OF AMERICA,  
*Northern District of New York.*

On this 18th day of February, 1878, before me personally came Walton Dwight, the person whose schedule is contained in the foregoing, marked A & B, and who, being by me first duly sworn, did declare the said schedule to be a full and true statement of all the debts of said Walton Dwight, so far as the same are known to him, and the said  
444 Schedule B to be a full and true statement of all his estate, both real and personal, so far as the same is known to him, in accordance with the Act of Congress, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States, and the several acts amendatory thereof.'  
L. E. BOWE, Register in Bankruptcy."

Counsel for the defendants then read in evidence

the petition of the bankrupt for his discharge, filed August 4, 1877. Prefixed to this petition is a certificate, dated August 8, 1877, signed Charles A. Hall, E. M. Fitzgerald, assignees.

The certificate is as follows :

“ *Northern District of New York*, ss. : 445

“ We, the undersigned, assignees of the estate of Walton Dwight, hereby certify that the annexed is a complete list of all creditors who have proved their claims against said estate, so far as the same are known to us, and that no assets have come to our hands, as such assignees, or on account of said estate. Binghamton, Aug. 8, 1877. Charles A. Hall, E. M. Fitzgerald, Assignees.”

Then follows a schedule of the creditors who are stated to have, before the date of this petition, proved their debts. 446

The petition is addressed to the Hon. William J. Wallace, Judge of the District Court of the United States for the Northern District of New-York, and is as follows :

“ WALTON DWIGHT, of Binghamton, in the County of Broome, and State of New-York, respectfully represents that on the first day of May last past, he was duly declared a bankrupt under the Act of Congress in such case made and provided ; that he had duly surrendered all his property and rights of property, and fully complied with all the acts of the Court touching bankruptcy, and is ready to submit himself to any other and further process and orders that the Court may require ; that on the 8th of June, 1877, Charles A. Hall and E. M. Fitzgerald, both of Binghamton, County of Broome, in said District, were appointed Assignees of his estate, and that no assets have come to the hands of such Assignees 447



as your petitioner is informed and believes. Wherefore he prays he may have his discharge and the certificate granted according to the Act of Congress.

Dated the 2d day of August, 1877.

448 (Signed) WALTON DWIGHT."

Verified by Walton Dwight, August 2d, 1877, before Philip A. Heyne, U. S. Commissioner.

Attached to the petition is the usual order for publication.

449 The counsel for the defendants then introduced in evidence specifications in opposition to discharge of the bankrupt, filed on behalf of Charles Bartlet and Arthur Bartlet of the firm of Bartlet Brothers, the First National Bank of Binghamton, L. V. D. Smith, George J. Read and P. L. Tuttle, all of the City of Binghamton, County of Broome, State of New-York, creditors of the above named Walton Dwight. They say that they oppose the granting of such discharge and for the grounds for such opposition file the following specifications, and attached to these specifications is an affidavit signed by several of the opposing creditors, including Bartlet, Tuttle, Read and Smith, sworn to the 20th of December, 1877, before F. Stuart, Notary Public. The affidavit is also verified by D. W. Ayres, who signs as director of the First National Bank of Binghamton.

450 Also notice of application for discharge, with petition and affidavits, filed September 9, 1881, the original order was returnable on the 24th of May, 1881, it was not dated; the hearing upon this notice by stipulation was postponed to June, 1881, and kept alive by consent.

The affidavit of Neri Pine, subscribed and sworn to the 15th day of September, 1878, and attached to the petition, was read for the purpose

of showing the steps taken in Colonel Dwight's bankruptcy proceedings, the recitals not to be taken as evidence of the fact therein cited. The affidavit was as follows :

“NERI PINE of Binghamton, in said District, being duly sworn, says that he is a counsellor and solicitor of this Court, and appeared for said bankrupt upon his application for his discharge. That upon a hearing for his discharge the last of the evidence was signed on the 28th of February 1878, and the case was submitted to the Register at that time, except that briefs were to be furnished, that deponent prepared his brief and the same was ready to submit to the Register about June 1st, 1878, but owing to the pressure of business upon counsel for the opposing creditor, Mr. S. C. Millard, and the illness of his partner, Mr. Hotchkiss, the briefs were not submitted to the Register until the 30th day of July, 1878 ; but all briefs and papers were on that day submitted, and that no action of the bankrupt or his solicitor was taken after that date in relation to said discharge until the 6th day of November, 1878, when deponent received notice from the Register that he had made and signed his report, that said bankrupt was then sick, but hoped soon to be around again, when immediate action would have been taken to procure the confirmation of said report, but on the fifteenth day of November, 1878, the said bankrupt died, and that no action has since been taken on behalf of bankrupt.”

The counsel for the defendants also read the petition for Walton Dwight's discharge as follows :

“ IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF NEW YORK,

454

*In Bankruptcy.*

In the matter of WALTON DWIGHT, a bankrupt.  
No. 5377.

*To the Hon. William J. Wallace, Judge of the  
District Court of the United States, for the  
Northern District of New York :*

455

The petition of Anna N. Dwight, of the town of Windsor and county of Broome ; and O. W. Chapman and George F. Lyon, of the city of Binghamton, county of Broome, in said district, respectfully represents, upon information and belief, that on the first day of May, 1877, Walton Dwight, then a resident of the city of Binghamton, in the Northern District of New York, was declared and adjudged by this Court a bankrupt ; that thereafter, the said Walton Dwight duly applied to the Court for a discharge from his debts ; that specifications against his discharge were filed by certain of his creditors, and an answer thereto filed by said bankrupt ; that the said specifications and answers were referred to L. E. Bowe, Esq., one of the Registers of this Court, to take the evidence thereon and report the same, with his opinion, to this Court ; that the evidence was taken thereon, and on the fourth day of November, 1878, the Register made, signed and delivered to the solicitor for said bankrupt, his report thereon, finding and reporting in favor of the bankrupt on all the specifications, and the same was, on the 8th day of November, 1878, duly filed with the Clerk of the Court ; that on the fifteenth day of November, 1878, said bankrupt died, leaving a last will

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and testament by which your petitioner, Anna N. Dwight, is appointed executrix, and your petitioners, O. W. Chapman and George F. Lyon, executors of said last will and testament; that said will has been duly admitted to probate, and letters testamentary issued to your petitioners, and they are now acting thereunder. Wherefore your petitioners pray that a hearing may be had in this Court upon the report of said Register, and the exceptions thereto overruled, and the discharge granted to said bankrupt, as of the date of the signing and delivery of said report, and for such other and further or different relief as to the Court may seem just. And for all further proceedings necessary or proper, and your petitioners will ever pray. 457

(Signed) O. W. CHAPMAN,  
 GEORGE F. LYON,  
 ANNA N. DWIGHT. 458

NORTHERN DISTRICT OF NEW YORK, } ss. :  
*Broome County,*

O. W. CHAPMAN and GEORGE F. LYON, two of the petitioners above named, being duly sworn, depose and say: That the matters stated in the foregoing petition are true to the best of their knowledge, information and belief.

(Signed) O. W. CHAPMAN.  
 GEORGE F. LYON.

Sworn to before me this 14th }  
 day of August, 1879. } 459

D. M. CARVER,  
*Notary Public.*

*Broome County, ss. :*

ANNA N. DWIGHT, of Windsor, in said county, one of the petitioners above named, being duly sworn, deposes and says: That the matters stated

in the foregoing petition are true to the best of her knowledge, information and belief.

(Signed) ANNA N. DWIGHT.

Sworn to this 19th day {  
of August, 1879. }

460 G. L. SESSIONS,  
*Notary Public,*  
*Broome County.*

The counsel for the defendants then read in evidence papers produced from the files of the Clerk of the United States District Court for the Northern District of New York and endorsed "No. 6178, In the Matter of Anna N. Dwight, a debtor." Petition and Schedules A and B, Neri Pine, Solicitor for Petitioner, Binghamton, N. Y., and filed August 27, 1878, at 11 A. M.

461 The certificate of D. F. Gott, Register in Bankruptcy, dated Syracuse, August 27, 1878, is to the effect that he has examined the within petition and verification, and also the schedules and inventory annexed thereto, and that the same are in proper form and sufficient in substance to authorize an adjudication in bankruptcy, and the issuing of a warrant under Section 5014 of the Revised Statutes of the United States.

462 The *Petition* is as follows: "To the Hon. WILLIAM J. WALLACE, Judge of the District Court of the United States for the Northern District of New York: The petition of Anna N. Dwight, of the town of Windsor, in the county of Broome and State of New York and district aforesaid, respectfully represents that she has resided for six months next immediately preceding the filing of this petition at Windsor, within said Judicial District. That she owes debts exceeding the amount of \$300, and is unable to pay the same in full. That she is willing to sur-



render her estate and effects for the benefit of her creditors, and desires to obtain the benefit of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States, approved March 2, 1867;" that the schedule hereto annexed, marked "A," and verified by your petitioner, contains a full and true statement of all her debts. And (so far as it is possible to ascertain), the names and places of residence of her creditors. And such further statements concerning said debts as are required by the provisions of said act. 463

The schedule hereto annexed, and marked "B," and verified by your petitioner's oath, contains an accurate inventory of all her estate, both real and personal, assignable under the provisions of said act.

Wherefore your petitioner prays that she may be adjudged by the Court to be a bankrupt within the purview of said act, and that she may be decreed to have a certificate of discharge from all her debts provable under the same. 464

(Signed) ANNA N. DWIGHT.

UNITED STATES OF AMERICA, }  
 BROOME COUNTY, }  
*Northern District of New York.* }

I, ANNA N. DWIGHT, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief. And I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same. 465

(Signed) ANNA N. DWIGHT,  
*Petitioner.*

Subscribed to before me, this {  
 25th day of August, 1878. }

G. L. BOON,

*Notary Public."*

Under the head of "Names and Creditors," on the first sheet, which is a statement of all creditors to be paid in full, or to whom priority is secured according to the provisions of the 28th section of the act, the word "none" is written opposite each specification.

466 The next sheet, which is entitled "Creditors holding Securities," contains the name of the First National Bank of Binghamton as creditor. In the column headed "Residences and Descriptions," it is stated that the National Bank of Binghamton, N. Y., hold the notes of petitioner to the amount of \$60,000. The date and amount of such notes, with name of maker and endorser, are hereto annexed on sheet marked "A-2-A." The securities are set forth on a sheet marked "A-2-B."

467 Under the column headed "When and Where Contracted," appear the words "Binghamton, N. Y." Under the column headed "Value of Securities," appears the word "Doubtful." In the column headed "Amount of Debts," are the figures \$60,000.

Schedule A. 2. A. contains a statement of the several notes referred to on the foregoing sheet. And at the end of that statement appears this paragraph : "In addition to the mortgages above described the said First National Bank holds mortgages on the property of Walton Dwight for the same notes and indorsements in which this petitioner has joined as the wife as the said Walton Dwight." The schedule is signed "A. N. Dwight, petitioner."

468 The sheet entitled "Creditors holding Securities" contains the following in the column headed "Names of Creditors," "Atlantic Mutual Life Insurance Company, and also the Continental Life Insurance Company of New-York."

In the column headed "residence and descriptions," opposite the name of the Atlantic Mutual, the place of business is stated, "Albany, New-York ;" then follows this memorandum : "This

is for money borrowed from said company May 10, 1873 ; the security held by said company is a mortgage for the amount, dated May 10th, 1873, and covering lots 3 and 4 Dwight Place. In the same column opposite the name of the "The Continental Life Insurance Company" is the following memorandum : Place of Business "New-York. 469

This is for money borrowed September 11th, 1873 ; to secure the sum they hold a mortgage of date of September 11th, 1873, on a part of the Dwight Place. This I am informed has been foreclosed and the property sold. The present status of this I do not know." In the next column headed "when and where contracted" opposite the name "The Atlantic Mutual Life Insurance Company" appears the entry "May 11th, 1873, Binghamton New-York," also the memorandum "Walton Dwight joins in the bonds given with the mortgages." In the next column headed value of securities, and opposite the entry 470

of the Atlantic Mutual claim are the figures \$75,000. In the next column headed amount of debts, the amount due the Atlantic Mutual is stated to be \$50,000. The amount due the Continental Life Insurance Company of New-York is stated to be \$30,000. There is no entry of the value of the securities representing that claim. The next sheet of Schedule A is entitled "creditors whose claims are unsecured." And on that sheet appears under the word "creditors," the words "The Equitable Life Assurance Society of the United States"; in the column headed "residence and occupation," their place of business is stated to be New-York, and the occupation, 471

life insurance; in the next column headed "amount," is contained the entry \$8,595.30, under the head "when and where contracted" appears the entry "May 6th, 1878, New-York"; the next column entitled "nature and consideration of debts, and whether any judgment, bond, bill of exchange, promissory note, etc," contains this memorandum: "Is a judgment for deficiency arising upon the

foreclosure of a mortgage for \$30,000 given to the said corporation September 30th, 1873, for money borrowed by me, on that date from said corporation. Walton Dwight is also liable on that judgment for the amount thereof." The next sheet of Schedule A, headed "liabilities on notes or bills of discount which ought to be paid by the drawers, makers or acceptors," contains this memorandum :  
 472 "So far as known the petitioner is not liable on any notes, except those to the First National Bank of Binghamton, which are described in Schedule A 2 A of this petition. The petitioner is supposed to be liable with Walton Dwight on all that paper." The next sheet of Schedule A entitled "accommodation paper" contains this entry "None so far as known to the petitioner" :—On the first sheet of Schedule B entitled "interest in lands" appears this entry "All that tract or parcel of land in the city of Binghamton, County of  
 473 Broome, and State of New-York, known and distinguished as lots or blocks 3 and 4 in Dwight place, as laid down on a map of said Dwight place, recorded in Broome County Clerk's Office in Book 86 of Deeds at page 523, and is the premises on which the Dwight House stands."

And opposite this under the head "Incumbrances thereon if any and date thereof," "A mortgage of \$50,000 to the Atlantic Mutual Life Insurance Company of Albany, New-York, given May 10th, 1873. Also a mortgage to the First National Bank of Binghamton, New-York, dated  
 474 February 12th, 1876, to secure notes made or indorsed by the petitioner." The estimated value of the property is stated to be \$75,000. The next sheet of Schedule B, entitled "personal property," is as follows : "Cash on hand, nothing ; bills of exchange, promissory notes, or securities of any description, none ; stock in trade, none ; household goods and furniture, household stores and wearing apparel, and ornaments of the person—wearing

apparel for self of estimated value of \$200 ; books,  
 prints and pictures, none ; horses, cows, sheep and  
 other animals, none ; carriages and other vehicles,  
 none ; farming stock and implements of husbandry,  
 none ; ships and shares, machinery, fixtures and  
 apparatus in business, with the places where each  
 is situated, none ; goods or personal property of 475  
 any other description, with the places where it is  
 situated, none." The column foots up \$200. The  
 next sheet is entitled " Choses in Action," and  
 there is entered in the column headed, " debts due  
 petitioner on open account, none ; stocks in incor-  
 porated companies and interest in joint stock com-  
 panies, 3831 shares of the Williamsport and Canada  
 Lumber Company of Williamsport, Penn. This  
 stock is pledged to Cummins, Allen & Cummins,  
 of Williamsport, and has been sold by them, as I  
 understand, for the amount due them for legal ser-  
 vices for Walton Dwight, and is not supposed to  
 have any market value ; policies of insurance, see 476  
 Schedule " E," hereto annexed. The policies are all  
 on the life of Walton Dwight, and payable to peti-  
 tioner at his death ; unliquidated claims of any  
 nature, with their estimated value, none." The  
 next Schedule " E" gives a list of these policies, viz :  
 " Policies on the life of Walton Dwight, payable  
 to the petitioner : Equitable Life Assurance Society  
 of the U. S., \$10,000, premiums payable annually ;  
 John Hancock Mutual Life Ins.Co. \$629.00, paid up  
 policy ; Washington Life Ins. Co., paid up policy,  
 \$650.00 ; Washington Life Ins.Co., paid up policy,  
 \$690.00 ; Germania Life Ins. Co., paid up policy,  
 \$413.00 ; National Life Ins. Co. of the United 477  
 States, paid up policy, \$535.00 ; Universal Life Ins.  
 Co., paid up policy, \$234.00 ; Craftsmen's Life Ins.  
 Co., paid up policy, \$500.00 ; Globe Mutual Life  
 Ins, Co., paid up policy, \$712.00." The next sheet  
 is entitled " Property in reversion, remainder or  
 expectancy, including property held in trust for  
 petitioner," and contains entries as follows : interest



in land—do not know of any ; personal property, none ; property in money, stocks, shares, bonds, annuities, &c., none ; and the word “none” is appended to the designation of every other class of property designed to be stated in the schedule. The next sheet is entitled “A particular statement  
 478 of property claimed, as excepted from the operation of said act,” and contains the following : “So much and such part of the policies of insurance on the life of Walton Dwight, which are set forth in Schedule 3 B C, as I am entitled to under said Bankruptcy Act. Clothing for self.” The next sheet is entitled “Schedule of books, papers and writings,” and as to books, the answer is “have none” ; deeds—a deed from Lewis Seymour of the property afterwards subdivided and known as Dwight Place ; papers, none ; the affidavit of the petitioner follows the schedules referred to.

479 UNITED STATES OF AMERICA, }  
                   *Broome County,* } ss.:  
 Northern District of New York, }

On this 25th day of August, A. D. 1878, before me personally came Anna N. Dwight, the person mentioned in and who subscribed the foregoing petition and schedule, marked “B,” and who being by me duly sworn, did declare the said schedule to be a full and true statement of all her estate—both real and personal—in accordance with the Act of Congress, entitled, ‘An Act to establish a uniform  
 480 system of Bankruptcy throughout the United States, approved March 2, 1867.’

The counsel for the defendants then read in evidence the adjudication in bankruptcy granted upon the petition last above referred to, which adjudication is endorsed, “Filed August 30, A. D., 1878” ; also an affidavit made by Anna N. Dwight, sworn to August 30, A. D. 1878, before L. E. Bowe, Reg-

ister in Bankruptcy, and prefixed to said adjudication, to the effect that she resides within the jurisdiction of the United States, has debts provable under the Bankruptcy Act, and has duly filed the petitions and schedules required by the Revised Statutes, following which is the finding of the Register in Bankruptcy, L. E. Bowe, as follows: "I, 481  
the undersigned, a Register of said Court in Bankruptcy, upon good proof before me taken, do find that the said Anna N. Dwight, of Windsor, County of Broome, State of New York, has become bankrupt within the true intent and meaning of the Act of Congress, entitled, 'An Act to establish a uniform system of bankruptcy throughout the United States, approved March 2, A. D., 1867'; 'An Act supplemental thereto and amendatory thereof, being Title LXI of the United States Revised Statutes, and amendments thereto,' and I do hereby declare and adjudge Anna N. Dwight a bankrupt accordingly." 482

The counsel for the defendants also read the petition of said bankrupt, Anna N. Dwight, for her discharge, final oath, and Register's certificate of no debts provable—endorsement showing Neri Pine, as solicitor, and the date of filing November 19, 1878. The certificate of L. E. Bowe, Register in Bankruptcy, was dated Otego, November 15, 1878 and was to the effect that "there have been no debts proved and filed with me in the above matter." Following that was the affidavit of Anna N. Dwight, sworn to the 15th of November, 1878, before Charles W. Loomis, notary public at 483  
Binghamton, in the State of New York, the affidavit being on a blank, and in the ordinary form required on procuring discharge in accordance with the provisions of the statute. The petition for discharge was dated on the same day (November 15, 1878), and was signed by Anna N. Dwight, the bankrupt, and was verified on the same day before Charles W. Loomis, notary public. The petition

was addressed to the Judge of the District Court of the United States for the Northern District of New York, and represents that on the first of September last past the petitioner was duly declared a bankrupt; that she had duly surrendered all the property and rights of property, and fully complied with and obeyed all the directions of the Court touching her bankruptcy, and was ready to submit herself to any further examinations, orders and directions which the Court might require; that more than 60 days have elapsed since the date of said adjudication in bankruptcy; wherefore she prays that she may be decreed by the Court to have a full discharge from all her debts payable under said Bankruptcy Act, and the certificate granted according to the said Act of Congress. Affidavit of verification followed, to which was appended the order of the Bankruptcy Court, dated 19th November, 1878, at Buffalo, signed by Winfield Robbins, Clerk of the District Court for said district, directing that a hearing be had upon the petition on the 14th of January, 1879, before the said Court at Syracuse, with the other usual directions provided for by the statute in that order.

Counsel for the defendants also read in evidence the record of the appointment of an assignee of said Anna N. Dwight, filed Dec. 5, 1878, in the Bankruptcy Court, Clerk's Office.

Counsel for the defendants also read in evidence the memorandum of first meeting of creditors, at Otego, in said district, on the 3d day of December, 1878, before L. E. Bowe, Register in Bankruptcy, and signed by the Register. The memorandum stated as follows: "This being the adjourned day appointed by the Court for the first meeting of creditors under said bankruptcy, whereof the notice required in that behalf has been duly given by publication and service by mail, as appears by the messenger's return of the warrant and his doings thereon, I, the undersigned, Register of said Court

in Bankruptcy, sat at the time above mentioned, pursuant to such notice, to take the proof of debts and for the choice of assignees under the said bankruptcy, and I do hereby certify that the Receiver of the Continental Life Insurance Company, John P. O'Neill, appeared by S. C. Millard, his attorney, and filed claim of said Receiver, who resides in the city of New-York, for the sum of \$20,590.75, that being the only debt allowed to be voted, and voted for John B. Bowen for assignee, and there being no opposing interests, I appointed John B. Bowen, of Binghamton, in the county of Broome, and State of New-York, as assignee of the estate of said bankrupt; and it is ordered that he be hereby, and he is appointed the assignee accordingly." The approval of the choice of the assignee by Judge Wallace, dated December 7, 1878, followed. 487

Also, the "Memorandum of Issuing Assignment," filed Dec. 12, 1878, reciting that the assignee filed his bond, with sureties approved, and that the Register forthwith issued to him, under the seal of the Court, an assignment of all the estate of the said bankrupt. 488

Also, "Order giving leave to creditors to appear in discharge proceedings," filed May 12, 1879. The order purported to have been made on the 6th of May, 1879, at a term of the District Court, held at Syracuse, before his Honor, Judge Wallace, reciting that the cause came on to be heard on a motion for leave to file specifications against the bankrupt's discharge, J. B. Brooks appearing in support of the motion, and Neri Pine opposed, and orders that "The First National Bank of Binghamton, and any and all other creditors who have now, or may before that time, prove their debts against said Anna N. Dwight, shall have eight days' notice of the final examination of said bankrupt, and shall have the right to examine said bankrupt, and witnesses as to any matters upon which the Register is required to report at such 489

examination, and that creditors who appear at such examination shall have notice of all further proceedings in relation to the question of the discharge of said bankrupts."

Also, "Report of Register L. E. Bowe on application of bankrupt for discharge, filed December 1880." After reciting the proceedings the Register reports as follows: "At the time and place appointed by me for the purposes of the said order, I was attended by Mr. Neri Pine, the counsel for said bankrupt, and by said bankrupt; and Mr. John B. Bowen, the assignee heretofore appointed herein, made his report to me that the amount of \$609  $\frac{55}{100}$  remained in his hands, but that the settlement of the estate will not be retarded by the discharge of said bankrupt, and I proceeded to take the necessary proofs," etc.; that he has examined the papers and finds, and accordingly reports as follows: "The second and  
491 third meetings of creditors have not been held, for the reason that the amounts due said bankrupt's estate on life insurance policies held by her have not yet been collected; that the discharge of said bankrupt in his judgment will not, in any manner, affect the collection of said policies, or the settlement of said estate; that all papers required by order No. 7 have been filed with the clerk, except the proof of death; and all papers received from the clerk for examination have been returned to the clerk's office; that the assets of the bankrupt were not equal to thirty per cent. of the claims proved  
492 against the estate of the bankrupt on account of debts and liabilities of the bankrupt upon which she was liable as the principal debtor, and upon which claims had been proved prior to making the order; and that the assent of one-quarter in number and one-third in value, &c., &c., had been filed in this case after the time of the said hearing of the application for such discharge on said 14th day of June, 1879; also that the bankrupt had, in all



things, conformed in her duty under the Bankrupt Act, and was entitled under the provisions thereof to receive her discharge.

Also the "Decree for Discharge," filed January 22, 1881, at 9:30 A. M.

Also paper entitled "Assent of Creditor to Bankrupt's Discharge, by the First National Bank of Binghamton, received by me at Otego, this 13th November, 1880, L. E. Bowe, Register." Being a consent by the First National Bank which had proved a debt in the sum of \$60,012.47. 493

CHARLES F. TUPPER, called as a witness on behalf of the defendants, and sworn, testified as follows:

*Examined by Mr. Larocque:*

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I am the Clerk of Broome County, and have been served with a subpœna to produce certain judgment rolls; the papers I hold in my hands are judgment rolls, filed in the office of the Clerk of Broome County, and produced by me from the files of that office.

The counsel for the defendants then read in evidence a judgment roll in an action in the Supreme Court, County of Broome, in which Harper Dusenbury was plaintiff and Walton Dwight, defendant, filed May 21, 1877, at 2½ P. M., damages, \$21,572.16, costs and disbursements, \$88.87, making a total of \$21,661.03; Edward K. Clark, plaintiff's attorney. 495

Also judgment roll in an action in the Supreme Court wherein the Mutual Life Insurance Company of New York was plaintiff and Walton Dwight and others were defendants, filed June 6th, 1877, endorsed "Chemung Special Term, June 5, 1877. Amended and ordered entered

in Broome County Clerk's office, L. A. Baker, Deputy Clerk," being record of a judgment in a foreclosure action, the property affected being several dwelling houses situated in the city of Binghamton, known and distinguished on the map of Dwight Place by the lot numbers 7, 8, and 9. The record shows that the defendants, Walton Dwight and Anna N. Dwight, were represented by Chapman & Martin as their attorneys; the report contained in the judgment roll made by Robert Stevens, Referee, shows the amount due the plaintiffs for principal and interest on the 5th of June, 1877, the date of the report, was \$42,331.77.

Also record of the judgment of foreclosure and sale in an action in the Supreme Court wherein the Equitable Life Assurance Society of the United States was plaintiff and Anna N. Dwight and Walton Dwight and others were defendants, the action having been brought for the foreclosure of a mortgage on property described as a certain lot with buildings thereon in Binghamton, being the lots known and distinguished on the map of Dwight Place as lots 2, 5, and 6; the report of the Referee, dated November 26, 1877, signed by John F. Gulliver, Referee, shows that \$33,369.56 were due upon that mortgage at the date of that report; also Referee's report of sale, and order for judgment for deficiency in the case last mentioned, endorsed as filed May 6th, 1878, at 4:10 P. M.; the report shows that the proceeds of sale were insufficient to pay the amount due to the plaintiff, and that the amount of deficiency is the sum of \$8,578.54; this report was confirmed by order made at Binghamton May 6, 1878, before the Hon. C. E. Martin, Justice, providing as follows: "It is further adjudged that the Equitable Life Assurance Society of the United States, the plaintiff, recover of the defendants, Anna N. Dwight

and Walton Dwight, the sum of \$8,578.54, with interest, from the date of the report, and that it have execution therefor."

The counsel for the defendants then read in evidence papers produced by said clerk, consisting of judgment rolls in eight actions for foreclosure of mortgages, in all of which John P. O'Neill, as Receiver of the Continental Life Insurance Company, was plaintiff, and Anna N. Dwight and Walton Dwight, her husband and others, were defendants, numbered from 1 to 8, both inclusive, judgment rolls in all the actions having been filed on the 13th day of November, 1877. Action No. 1 covered a lot on the northerly line of Ferry street, Binghamton, distance 80 feet and 6 inches easterly from Front street, and the report of the Referee shows the amount due upon this mortgage, on the 13th of November, 1877, to be \$3,855.79; No. 2 covered another lot of land in the city of Binghamton, on Dwight Place, and the report of the Referee in that case, which is dated November 13th, 1877, showed an amount due at the date of the report, of \$3,855.79; No. 3 covered another lot on the westerly side of Dwight Place, and the report of the Referee in that action, which is dated November 13th, 1877, shows the amount due at the date of the report to be \$3,855.79; No. 4 covered another lot on Dwight Place, and the report of the Referee in that case, dated November 13th, 1877, shows the amount due at the date of the report to be \$3,855.79; No. 5 covered another lot in Binghamton, on Dwight Place, and the report of the Referee, dated November 13th, 1877, shows the amount due at the date of the report to be \$3,855.79; No. 6 covered another lot on Dwight Place, and the amount due on the same the 13th of November, 1877, as appears by the Referee's report of that date, was \$3,855.79; No. 7 covered another lot on Dwight Place, and the amount due on the mortgage at the date of the Referee's report, November 13, 1877, was

\$3,855.79 ; No. 8 covered seven lots in the city of Binghamton, and the amount due in that case, on the 13th of November, 1877, the date of the Referee's report, is stated to be \$6,059.07.

The counsel for the defendants also read in evidence from papers so produced the records of  
 502 judgments for deficiency in the eight actions last above referred to, entered against Walton Dwight and Anna N. Dwight personally, June 28, 1878, as follows : No. 1, \$2,076.27, with interest, from June 19, 1878 ; No. 2, \$2,826.77, with interest from the same date ; No. 3, \$2,293.76, with interest from May 4, 1878 ; No. 4, \$2,378.39, with interest from June 19, 1878 ; No. 5, \$2,393.66, with interest from May 3, 1878 ; No. 6, \$2,428.39, with interest from June 19, 1878 ; No. 7, \$2,478.39, with interest, from same date ; No. 8, \$4,415.62, with interest from October 14, 1878.

503 The counsel for the defendants also read in evidence a transcript of the docket of said Clerk, showing a judgment of the Supreme Court to have been entered in Broome County, March 2, 1877, in favor of Egbert A. Clark against Walton Dwight and Harper Dusenbury, for \$10,526.34 damages, \$21.35 costs, amounting together to \$10,547.69. Attorneys, Chapman & Martin.

I know Harper Dusenbury ; I think he is an uncle of Mrs. Dwight ; they are both named Dusenbury ; her father's name was George Dusenbury.

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CHARLES W. LOOMIS, called as a witness on behalf of the defendants and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in Binghamton ; I am a lawyer ; have

been practising my profession in Binghamton  
 about ten years; knew Walton Dwight and his  
 wife in the year 1878; I think I took his affidavit to  
 some papers on the 15th day of November, 1878; I  
 think it was that date. I am not positive as to the  
 date; I think it was the day on the night of which  
 he died. I think he was in the front room of the  
 cottage of the Spaulding House at the time; I  
 couldn't say positively whether he was in his  
 clothes or not; I think he was sitting in a reclining  
 chair; I think his wife was present and another  
 lady; I can't say that I know Mrs. Owen, the sister  
 of Mrs. Dwight; I didn't know the lady who  
 was present; I think nobody else was present at  
 that time; I took there, to have sworn to by Col-  
 onel Dwight, some papers given me by Mr. Pine,  
 and I went there at his request. I have an impres-  
 sion that the papers related to bankruptcy; I think  
 they were bankruptcy papers; I don't know  
 whether or not it was an affidavit required in the  
 proceedings in the bankruptcy case on the applica-  
 tion for discharge; I didn't examine them; I sim-  
 ply went there to swear him; I couldn't say that  
 Col. Dwight examined the papers, but I think he  
 had already signed them before I went there, but I  
 am not sure; he swore to them before me. I think  
 it must have been three or four weeks before that  
 that I had seen him; at that date I think I met  
 him on the street. I had a little conversation with  
 him on this day when I went to the house; I was  
 in the room with him at that time, ten minutes per-  
 haps; I think I spoke with him about his health,  
 and I remember he inquired for my father's health  
 very kindly; he seemed to be clear in his mind, and  
 spoke readily and freely; he seemed quite strong,  
 that is, comparatively strong. I observed no diffi-  
 culty about his speaking; his voice was quite full,  
 I think; I don't think we talked about other topics  
 than the business which brought me there, with the  
 exception of his health and my father's health. I



think the time was about noon ; I think his face was quite flushed, that is my impression now ; it looked haggard ; I think his general expression was haggardness ; he looked like a sick man ; I noticed the flush of his face and the general haggard look ; I think he stated to me that he was under the influence of stimulants at that time.

*Cross-examination by Mr. Newton :*

I think I took two affidavits there that day—the affidavit of Col. Dwight and the affidavit of his wife. That was my impression, but I am not positive ; I don't think I saw any one there during my visit besides Mrs. Dwight and the sister, or the other lady I spoke of ; I remained in the room where Mr. Dwight was on that occasion, I don't think, longer than ten minutes ; there might have been some conversation with Mrs. Dwight.

509 Q. Do you remember having any conversation with Mr. Dwight at that time ? A. Yes, sir ; I think I do.

Q. (Paper shown witness.) I show you an affidavit that has been read here, of Mrs. Dwight's. Was that sworn to on that day by her, before you ? A. Yes ; I think it was sworn to in that room.

Q. (Paper handed witness.) I show you another affidavit purporting to have been sworn before you on the 15th of November, 1878, signed by Mrs. Dwight. Did she swear to that on that day and on that occasion ? A. I think she did, yes ; those are the affidavits I took on that occasion ; I did not examine the papers ; while I was there to get these affidavits I had this interview with him.

510 Q. Do you remember any conversation you had that day with him ? A. I remember something of the conversation, the substance of it.

Q. Upon what was the subject of the conversation ? A. About his health and his condition of health.

Q. Please state what he said and what you said ?

A. I could not give the words, I don't know that I can give anything of the words I said, but I can give the substance of what he said to me ; he said he was under the influence of stimulants, and he spoke of the sinking spells and the chill he had been suffering from, and I think he stated that he was liable to pass away in any of those. 511

Q. Was there any further conversation you remember ? A. Nothing further than inquiries for the health of my father, who at that time was somewhat unwell ; I had known Mr. Dwight quite well during his life at Binghamton, and had often seen him ; on this occasion referred to he was, I think, somewhat emaciated as compared with his appearance when I last saw him, that was not very marked ; I had not met him before during his sickness, at his room ; I think he was partially dressed, and in a reclining chair ; that is my impression ; I couldn't say that he said anything to me about his getting out ; I don't know whether, at the time I went there, Mr. Hermans had been there that day or not. 512

*Re-direct-examination by Mr. Larocque :*

Q. Mr. Loomis, I understood you to say on your cross-examination that you recognized two affidavits of Mrs. Dwight's as having been sworn to before you on this 15th day of November ; don't you also recollect that on the same occasion one affidavit was sworn to by Mr. Dwight before you ? A. I think there was one affidavit ; yes, sir.

Q. You didn't mean that those two were the only ones ? A. No, sir. 513

*Re-cross-examination by Mr. Newton :*

Q. Are you positive ? A. That is the best of my recollection.

Q. Are you positive any was sworn to by him

that day at all ? A. I don't know that I could say I am absolutely positive one was his.

Being subsequently further cross-examined, he testified as follows :

514 *Cross-examined by Mr. Smith :*

As to the appearance of Mr. Dwight on this occasion when I was there, on that 15th of November, I don't think I can give any more definite answer to that than I have ; I don't think I can describe it more definitely than I have ; I am not able to distinguish from the color of the skin whether the stimulant may have been applied outside, by rubbing the skin with it, or taken internally ; as to that particular thing I couldn't tell.

Q. Was there any fact you saw bearing on the question as to whether it was an external or internal application ? A. No, nothing but his statement ; I think he stated he had been taking a sponge bath with some stimulant ; I couldn't recollect now what it was.

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The counsel for the defendants then introduced in evidence the following applications for insurance made by Walton Dwight, addressed to the companies named, and dated on the days specified—that is to say :

516 Application to the John Hancock Mutual Life Insurance Company, dated August 21, 1878 (marked Exhibit 17).

Application to the Penn Mutual Life Insurance Company, dated August 20, 1878 (marked Exhibit 18).

. Application to the Phenix Mutual Life Insurance Company of Hartford, Connecticut, dated August 15, 1878 (marked Exhibit 19).

Application to the Globe Mutual Life Insurance

Company, dated August 20, 1878 (marked Exhibit 20).

Application to the Germania Life Insurance Company, the defendant, dated August 22, 1878 (marked Exhibit 21).

Application to the Mutual Benefit Life Insurance Company of New Jersey, dated August 1, 1878 517 (marked Exhibit 22).

Application to the Northwestern Insurance Company, dated August 18, 1878 (marked Exhibit 23).

Application to the Washington Life Insurance Company, dated August 15th, 1878 (marked Exhibit 24).

Application to the Berkshire Life Insurance Company, Pittsfield, Massachusetts, dated August 20, 1878 (marked Exhibit 25).

Application to the Home Life Insurance Company, dated the 20th of August, 1878, with postal card attached (marked Exhibit No. 26).

Application to the Manhattan Life Insurance Company of New-York, dated August 20, 1878 518 (marked Exhibit 27).

Application to the Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts, dated August 20, 1878 (marked Exhibit 28).

Application to the National Life Insurance Company of Montpelier, Vermont, dated Binghamton, N. Y., 20th August, 1878 (marked Exhibit 29).

Application to the New England Mutual Life Insurance Company of Boston, dated Binghamton, N. Y., August 20, 1878 (marked Exhibit 30).

Application to the New-York Life Insurance Company, dated August 20, 1878 (marked Exhibit 31). 519

Application of the same date as the preceding and addressed to the same company (marked Exhibit 32).

Application presented to the Life Department of the Travelers' Insurance Company, dated at Binghamton, August 20th, 1878 (marked Exhibit 33).

Application to the Union Mutual Life Insurance Company of Maine, dated at Binghamton on the 20th day of August, 1878 (marked Exhibit 34).

520 Application to the United States Life Insurance Company in the City of New-York, dated at Binghamton, 20th August 1878 (marked Exhibit 35).

Application to the Etna Insurance Company of Connecticut, dated 21 August, 1878 (marked Exhibit 36).

Application to the National Life Insurance Company of the United States of America, Washington, D. C., dated at Binghamton, August 22, 1878 (marked Exhibit 37).

Application to the Brooklyn Life Insurance Company, dated 30th August, 1878 (marked Exhibit 38).

Application to the Homeopathic Mutual Life Insurance Company of New-York, dated Binghamton, August 30th, 1878 (marked Exhibit 39).

521 Application to the State Mutual Life Insurance Company of Worcester, Mass., dated September 2, 1878 (marked Exhibit 40).

Application (2d) to the Manhattan Life Insurance Company of New-York, dated September 3d, 1878 (marked Exhibit 41).

Application to the Metropolitan Life Insurance Company, dated September 4, 1878 (marked Exhibit 42).

Application to the Knickerbocker Life Insurance Company of New-York, dated 6th September, 1878 (marked Exhibit 43).

522 Application to the Provident Savings Life Assurance Society of the city of New-York, dated 28th August, 1878 (marked Exhibit 44).

Application to the Equitable Life Assurance Society of the United States, dated Binghamton, August 20, 1878 (marked Exhibit 45).

Application to the Union Central Life Insurance Company, located at Cincinnati, Ohio, dated September 7, 1878 (marked Exhibit 46).

Application (3d) to the Mauhattan Life Insur-



ance Company of New-York, dated 9th September, 1878 (marked Exhibit 47).

The material portions of the applications so introduced in evidence (except the application to the defendant corporation, Exhibit 21, which is inserted in full) are contained in the Appendix. 523

NAT B. FREEMAN, called as a witness on behalf of the defendants and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in New-York City ; my business is real estate and negotiating loans ; in 1878 I was a special agent for the United States Life Insurance Company of New York ; I went to Binghamton in October, 1878, on business for the company ; went to see Walton Dwight ; I left New York on the evening of Thursday, October 3d, 1878, and arrived in Binghamton Friday morning, October 4th. I did not find him ; I made inquiry for him at the Spaulding House, and I made inquiry of several parties there whom I don't remember ; I ascertained where he was ; he was at Windsor. 524

I went to Windsor on Saturday morning, the 5th of October ; I first went to the hotel there, and afterwards to the house of Mr. Dusenbery, George Dusenbery ; when I first went to Mr. Dusenbery's house I did not find Mr. Dwight in ; I returned to the hotel ; I asked for him at the house of Mr. Dusenbery again at about half past seven in the evening ; I was there when he came in ; he told me he had been hunting ; he said that he had shot some partridges ; I met him in the house, and he was in ordinary dress, and appeared to be dry ; he was dry ; his clothing was dry ; I don't speak of him physically. 525

I first asked him if he was Mr. Walton Dwight, to which he said, yes. I then stated my business ; I asked him first if he had received a letter from the President of the United States Life Insurance Company ; he gave me no direct answer ; I had a copy of the letter with me, and handed it to him.

526 (Paper handed witness.) That is a copy of the letter which I handed him ; he read it in my presence. I handed him another letter, which he laid on the table ; I picked it up and read it to him. (Paper handed witness.) That is a copy of the letter which I now refer to ; I left the original of that letter with him ; I returned it to him.

The letters referred to by the witness were then introduced in evidence. They were marked respectively Exhibit 48 and Exhibit 49.

When I handed those letters to Mr. Dwight, and

527 read to him the latter letter, as testified to by me, I had with me \$86 ; that was the amount of the quarterly premium which had been paid on that policy as I was so informed and so believe ; the money was in United States Treasury notes, what are called legal tenders, I believe Greenbacks ; I offered the money to him. In relation to the subject of returning the policy and receipt, I demanded them and handed him the money and demanded the policy and premium receipt ; he refused to accept it ; he said under no circumstances would he accept the money or return the policy ; he said he held life insurance—I don't just

528 remember the amount, but it was about \$250,000 ; it might have been that exact amount, or it might have been less. (Paper shown witness.)

Q. Does that refresh your recollection ? A. That is entirely correct, \$256,000 ; it was taken by me at the time ; he said he expected to secure more insurance during the coming week.

Q. What did he say, if anything, on the subject

of surrendering any portion of that insurance?  
 A. That he wouldn't surrender any portion of it. He spoke on the subject of releasing the companies; he said he couldn't release any of the companies, and gave as a reason that it would compromise his manhood ; he made his applications in good faith, and fully understood what he was doing, or words 529 to that effect, when he made the application, and he would not surrender any one of the policies, because it would compromise his manhood, and might impair any of the risks, or words to that effect. I made the statement in writing at the time, and have in Court the words. He said he had a direct object in obtaining these policies ; he did not state what the object was; he said that he expected the companies would pay promptly in case he died. I referred again, after he had made that statement, to the misstatements in his application, as understood by the officers of the United States Life Insurance Company, and again made him a 530 tender of the money ; I had laid it on the table and I took it up and handed it to him. In response to that he said that there was nothing in the misstatements at all ; that he had contracted some years before, while in Canada, a severe cold, with a terrible cough ; that the cough produced a bleeding at the nose, and he supposed that blood or a part of it dropped into his throat, or fell into his throat, and it was coughed or hawked up, and that was all there was in it ; that is as near as I could remember his exact words ; he said that he had been treated with the utmost courtesy and consideration 531 by the United States Company and in stating why he would not surrender the policy, he said he believed that if the policy became a claim, or if he died, that they would pay the loss. He also said that he was in excellent health ; he was quite emphatic in regard to that ; he said that at Windsor he had been enjoying himself in hunting and other matters ; he said that on the day be-

fore he had swam across the river and back twice ; he spoke of it in the conversation in regard to these misrepresentations, and was convincing me of his particularly good health.

532 Q. How did he appear as to health? A. Very well, I think ; he was a very large man ; his color was good ; I could discover nothing in his countenance indicating any trouble about his health at that time.

Counsel for the defendants here introduced in evidence a letter of Walton Dwight addressed to James Buell, President of the United States Life Insurance Company, dated Sept. 11, 1878. It was marked Exhibit No. 50.

*Cross-examination by Mr. Smith :*

533 I returned to the counsel the paper I had in my hands while I was being examined ; I received two papers from the counsel for the defendants. (The defendants' counsel then handed the papers to Mr. Smith.)

(Paper handed witness.) I recognize that paper ; I saw Walton Dwight during his lifetime not to exceed three times ; two or three times ; he was pointed out to me ; I never met him but the once to converse with him ; he was shown to me once or twice ; the only interview I ever had with him was on the evening that I have mentioned, at Windsor ; then I went to him at the instance of the United States Life Insurance Company ; my business was 534 to have an interview with him, and not to get from him any declaration that I could ; it was not part of my business to procure any oral statement or declaration from Dwight ; my orders were peremptory to get that policy away from him ; it was not my sole business to get that policy from Dwight.

Q. Was there anything else besides that, except

to make him the tender of the money? A. Yes, to get the policy and receipt for the premium.

Q. Did you make any memorandum there on the occasion of the interview at that place, as to what had been said? A. I did; right on the spot, and in his presence.

Q Is this paper which you have given me, with the other two here, the paper that you made there at that time? A. Yes, I made it by the typewriter in New-York; I dictated it to the operator from my notes; I suppose they are at the company's office, but I don't know; I have no knowledge of them, they were not my property; my object in taking the notes was not to preserve my memory at all, they were written out in longhand; I made those notes for the purpose of communicating them to the company; I did not send that to the company; I dictated it to a typewriter in the very words of my notes, and my notes were in the precise form of the words used in the conversation; it was all that was said in regard to the business. Mr. Dwight entertained me very kindly and cordially, and we had a half hour's conversation after his refusal. I took all that was said on the subject of taking that policy back. He and I were talking on that subject not to exceed five minutes. 535

I was a special agent for any of the work of that company that I was ordered to do at any time; have been such special agent some four or five years, for this company; my occupation in that capacity ceased two years and a half after that transaction, or about that. I have not been engaged in other transactions for this company. 536

Q. Have you acted in any other capacity in any wise in connection with Dwight's life insurance? 537

A. Yes, since I left the employment of the United States Life Insurance Company, I was active for two years and a half, for the past two years and a half I have had nothing to do with them. I have written for newspapers in this case.



Q. And did some of that composition and publication relate to Dwight's life insurance? A. Not to my recollection.

538 Q. Why do you qualify it? A. I was intimate with a number of newspaper men. I do not interpose the qualification because of a failure of memory upon the subject. I am quite sure I have never written anything for the papers in connection with the Dwight insurance matters; I have written generally on the subject of life insurance, a very little since this case came up. Since my recovery of health I have entered into business again. I left the company on account of severe illness; my present occupation is buying and selling and managing transactions in real estate and negotiating loans on bonds and mortgages.

*Re-direct-examination by Mr. Larocque :*

539 Q. You have been interrogated about this paper I showed you to refresh your recollection. I understand you to say that this paper was produced by your dictation to a type-writer; the contents of the notes you had taken during an interview with Col. Dwight? A. Yes.

Q. How soon after your return to New-York was that done? A. I left Binghamton on Saturday night and arrived in New-York on Sunday morning, and on Monday morning my first business was to arrange my notes and make that report.

540 Q. And did you sign and verify this report on the 7th of October, 1878? A. I did. I think the date is correct; yes, Monday, the 7th of October; that is quite correct; and at the time when that report was made and verified by me, the facts were very clear in my recollection.

The paper referred to by the witness was then introduced in evidence by the counsel for the plaintiffs. It was marked Exhibit K.

LEVI C. PHILIPS, called as a witness on behalf of the defendants, testified as follows:

*Examined by Mr. Larocque :*

I reside in the city of Binghamton ; am a minister of the Methodist Episcopal Church ; I have also done something in the way of soliciting life insurance ; I knew Colonel Dwight, formerly of Binghamton ; some years prior to 1878 I first got acquainted with him ; it was when he was engaged in the Canada lumber business, before he made his purchase in Binghamton. 541

I met Colonel Dwight in the summer of 1878, in a railroad car, and had a conversation with him, on that occasion, on the subject of life insurance ; I can't recollect exactly the date of that interview, but it must have been some time in June or July. I had been to hold quarterly meeting for the Presiding Elder at Osborn Hollow, and was returning to Binghamton, and met him in the car. The conversation I then had with Colonel Dwight was, according to my best recollection, in substance, as follows: 542

He said he had been to Chicago, and just returned. He went there to make some money, and went in partnership with a couple of brothers who had money but no experience, and he had experience but no money, and he wanted to operate in grain. In two transactions, he said he cleared \$30,000, and was taken sick, and his partners thought he made money so easy, they could do the same ; and while he was sick they, in their operations, lost the \$30,000 he had made, so that left him, he said, without a dollar, and "now," he says, "I want some insurance in your company ; I consider it the best company there is," and he says, "I want ten or twenty thousand dollars insurance in your company. I design to get \$50,000 insurance to use as collateral security for a loan, and go back to Chicago and show those fellows that I can make 543

money." That is as near as I can recollect the conversation.

I did not, at that time, take any steps towards preparing the application for him. The next time I saw him upon the subject, I think, was on the street in Binghamton, about the first of August ;  
 544 he spoke something about insurance, and I put him off at that time, and nothing was done. I next had a conversation with him, upon the same subject, on the 15th day of August. He came to my office in Binghamton ; he said he had got \$15,000 insurance in the Connecticut Mutual, and wanted \$10,000 in the Washington Life, and I wrote the application up for him ; the application for a policy was prepared at that interview.

(Exhibit No. 24 handed witness.) That is the application which I prepared at that interview, and the signature of the witness, L. C. Philips, is my signature. The signatures of Walton Dwight,  
 545 which appear on this application, were made on that occasion, in my presence. The answers to the various questions, as they appear on this application, are in my handwriting ; the material of those answers was obtained from his suggestions, and from slips of paper he furnished me, with the answers on some of them. In writing down the answers, I used his language as far as possible. That is true of each and every answer that was put to the question on this application, I think.

Q. Did he bring with him one or more of the slips of paper on which the form of answers were already written? A. I think he took one out of his pocket  
 546 with the answer written on ; he wrote out in my presence other of his answers to be copied into the application. There was not much conversation in regard to it on the occasion when it was prepared, only he requested me to read it over to him, or else he read it himself—I think the questions he had written down he requested me to read, and he looked at his copies as I read it, and compared it. He looked it

over before signing. The questions were all read to him, I think ; I read them myself, and he looked it over before signing. Nothing else that I can now recall occurred in that interview.

I think we went either that day or the next to the Medical Examiner, with the application and left it with him. I think the signature of Neri Pine, 547 which appears under the head of "Questions to be answered by a friend," was put on at Mr. Pine's office ; I was there when he did it. I understood that Mr. Pine acted as the attorney for Mr. Dwight. Having received this application I forwarded it to the company. I know that a policy was issued based upon it ; I delivered the policy and received a quarter's premium ; the policy was delivered on the 31st day of August, I think it was, Col. Dwight called at my office in person and took the policy and paid the premium, the premium was paid in greenbacks, I think it was. The application 548 was for \$10,000 in eight different policies, I think, aggregating the \$10,000. One of \$5,000, one of \$2,000 or \$2500, and six of \$500 each. The second might have been for \$2,500.

I can't say when I next saw Mr. Dwight and had any conversation with him ; I met him several times ; I met him at one time on the side-walk and had a conversation with him, and he made the remark that he looked upon life very differently from what he used to ; he used to want to live and make money, but now he said "If my family were only provided for I would have no desire to live." I am not sure whether this was before or after I delivered 549 the policy to him, but I think it was after.

After this I had an interview with Mr. Dwight at Windsor ; I think it was the first week in September, as near as I can recollect ; Mr. E. S. French, the Superintendent of Agencies of the Washington Life Insurance Company was present ; during a part of the time Mr. Dusenbury, brother-in-law of Col. Dwight was also present ; I do not know Mr.

Dusenbury's first name. Mr. French first, I think, inquired about his health. He said it was good, never was better. He thumped on his lungs and said he had swam the Susquehanna river once or twice a day and been out on the hills hunting, and was going to swim the river that afternoon with a  
550 boy on his back. Then Mr. French told him that the Washington Life Insurance Company had sent him up there to demand the return of the policy, and tendered him the amount of the premium in greenbacks to the amount of \$86. Col. Dwight asked him for what reason he made that demand. He told him on account of misstatements in the application. He asked in what respect. He told him in relation to his health. That he had learned since sending the policy that he had had spitting of blood and rheumatism and cough. Col. Dwight acknowledged that it was true, those statements—but that  
551 he thought it would not make any difference as he was perfectly sound then, and had been passed by the Medical Examiner. Mr. French told him if he had answered those questions correctly, as asked in the application, the company never would have issued him a policy; he said he should not return the policy; he wanted to keep it, or said first, “you are all right so far as your company is concerned, but I want to keep the policies.” He gave as a reason, that if he should return them, other companies would learn the fact and go back on him, and that he couldn't get further insurance that he intended to get. Mr. French insisted on  
552 the return of the policies, but I think at that point, or about that time, he took us back into the store. I think we were sitting in front of the store. He said he would acknowledge before his brother-in-law the tender—that he would not accept of it, or return the policies; that he desired to keep them. At that time, or before we went in, he requested us to say nothing about it, because he said, “I am going to have insurance, and the companies have



got to pay it." I don't recollect anything further now. The first part of this interview, and the tender, and what was said in answer to it, occurred either while we were sitting on the stoop or standing in front of it, before we took our seats. Mr. Dusenbury was with us during the latter part of the conversation when we went into the store where Dusenbury was ; Mr. Dusenbury was not with us when we were outside. 553

*Cross-examined by Mr. Smith :*

During the period covered by my testimony I was the agent of the Washington Life Insurance Company, and of no other insurance company ; am a minister of the Methodist Church. I belong to the travelling connection, as they call it. I have been living in Binghamton about twenty years continuously ; I am what they call a superannuated preacher ; my health failed, so I was not able to do regular work. I have not been on circuit regularly ; I have been preaching only occasionally. My age is almost 62. I took considerable many applications for life insurance ; I couldn't say about how many during the year this application was taken ; it would be mere guess work. I don't recollect now, it might have been fifteen or twenty. They were mostly written up about in the same way, with the exception of age and state of health. I couldn't remember all the answers in those applications. I had known Col. Dwight, I should think some ten years. I had been the agent of this company about seventeen years. I knew him while he kept the Dwight House. I had been in the Dwight House, not as a guest or customer, but to call on persons who were there, not out of curiosity ; went there to visit friends on certain occasions. Col. Dwight used to come into my office frequently. I couldn't give the date when my acquaintance with Col. Dwight began, but it was about the time that 554 555

he bought that Canada land. I know something of that transaction. I should think it was something like twelve years ago. I couldn't say positive. I couldn't say as to the period over which that business relation extended.

Q. Do you remember of putting this question to  
556 Dwight : "Has he any predisposition, either hereditary or acquired, to any local or constitutional disease?" A. Yes, I remember that question ; I think that was answered orally.

Q. Are you able now, speaking from memory, to tell what answer he made to that question?  
A. I couldn't be positive ; that is as far as I could go.

Q. Do you remember putting this question to him : "Is the pulse soft and regular? What is its rate? Does it ever intermit or become irregular?"  
A. I didn't put that question to him, I remember that I didn't. He didn't say anything upon that  
557 subject to me.

Q. Do you remember of any question being addressed to him upon the subject of insurance in any other company? A. Yes ; I put down in the application the insurance that he mentioned to me which he then had on his life ; I put them down as he answered them.

Q. In the light of these questions are you able to say whether he then stated to you that he had a \$15,000 insurance in the Connecticut Mutual, do you remember? A. Yes, I remember.

Q. Then it must have been some other interview,  
558 wasn't it? A. No ; it was at that interview ; I did not put it down.

Q. Did he state it to you in connection with the question as to other insurance, and at the time when you wrote down the other answers that he gave? A. No, sir.

Q. Who put down the figures in answer to that question, that are in red ink? A. I do not know.

Q. Were they in there when the application was made? A. They were not.

Q. Have all these marks and entries in red ink in this application been made since the application was executed? A. I think they were; I don't recollect.

559

*Re-direct-examination by Mr. Larocque :*

Q. (Application handed witness.) The entries in red ink that the gentleman refers to upon this application here—state whether or not they represent, if you know, this action of the company itself after the application had been presented—were there any of the red ink marks upon the application when it left your hands to go to the company? A. I think not.

Q. They were put on after it passed out of your possession? A. Yes, sir.

Q. There was some interrogation about an insurance for fifteen thousand dollars in the Connecticut Mutual, which the counsel on the other side made to you upon the cross-examination, and which you desired to explain? A. When I came to read the answer to that question he said he wished to correct his statement in regard to the Connecticut Mutual; he hadn't yet got the policy, but that it had been sent on and they were having some correspondence in relation to it. That is the reason I didn't enter it in the application. 560

Q. *By the Court.*—You mean he said that the policy had been sent on or the application? A. The policy had been sent on to the agent in Binghamton; that he hadn't taken it yet; it was held in Harding's hands for further consultation. The portions in red ink represent simply memoranda made at the home office. 561

(Note: The counsel for the defendant expressly excepted these portions in red ink on introducing the application in evidence.)

LEROY E. BOWE called as a witness on behalf of the defendants and sworn, testified as follows :

*Examined by Mr. Larocque :*

I am one of the registers in bankruptcy for the  
 562 Northern District of New-York ; I reside at Otego,  
 Otsego County ; the proceedings in the case of  
 Walton Dwight, bankrupt, were had before me ; I  
 have in Court my official register of the proceedings  
 before me with reference to the estate ; the date of  
 the reference of that case to me was the 8th day of  
 June, 1877 ; that is the date of the appearance of  
 the bankrupt before me ; I probably received an  
 order a few days before ; the first meeting of the  
 creditors was held on that day ; on that day claims  
 were filed, and the assignees were appointed either  
 on that day or immediately succeeding—I think  
 563 upon that day ; the assignees were Charles A. Hull  
 and E. M. Fitzgerald, of Binghamton ; I can't tell  
 on what day the report of the appointment was  
 made to the Court ; the next step before me after  
 this first meeting was the receipt of the bond of the  
 assignees and their appointment, and the assign-  
 ment made to them, and the transfer of the prop-  
 erty ; that was on the 11th day of June ; the next  
 step was an application for an amended schedule,  
 on the 19th of February, 1878 ; in the meantime  
 there had been an examination in reference to his  
 discharge, but nothing in reference to the estate ;  
 those are all the records I have kept ; there were  
 564 proceedings taken before another Register named  
 Fanton ; I have been told so. On the 6th of April,  
 1877, I certified Walton Dwight's petition and  
 proofs ; on the 3d of May I received a copy of  
 the petition ; on the 16th of May I re-  
 ceived an order of reference to take charge  
 of that case ; on the 26th of May I received a  
 deposit of \$50 ; on the 8th of June I held the first  
 meeting ; on the 11th of June received and ap-

proved the bond, and issued the assignment. I have not the amount of the bond and could not say who the bondsmen were ; but I think it was slight ; it was understood there was no estate to pass into their hands. July 1st I made a report of the condition of the estate to the clerk and filed it with him ; on the 17th of December I held an examination in Binghamton. That is the first examination in which I took any part upon his application for a discharge. On January 1st, 1878, there was a continuation of the same examination at Binghamton ; on the 29th of January I attended there again, on the same examination, which continued from day to day until the 2d of February, 1878. On the 19th of February I heard his application for an amended schedule. On the 23d of February I made two copies of the schedule and filed them with the clerk. On the 28th of February I read, or attended to the reading of the testimony which I had taken in all those various times, by a stenographer, it having been copied and had the evidence subscribed by the witnesses ; on the 15th of August, 1878, I received brief and points on application for discharge from the counsel, Mr. Pine and Mr. Millard ; on the 24th of September I got the account books from the assignees ; on the 30th of October I made up a charge for the expense account, that is the fees and expenses for those examinations, and for the report. That I believe is about all I have in the matter excepting the receiving of the fees, &c., which I do not find here ; they are on my ledger. I made a report but can't state when that report was signed by me, excepting I remember this that soon after the report was—I think delivered, but I am not sure about that, I remember of hearing of his death. 565

Q. Now, with reference to the question of his death, he died on the 15th of November, 1878. Did you keep a press letter book in which you kept copies of your letters ? A. No, sir ; I did 566



not, and am unable to find any memorandum in any other of my books or papers which will enable me to say when I gave notice to anybody of the fact that my report was made, and what the purport of it was. My fees were not paid, when my report was notified to anybody. I will  
 568 say that I remember the fact in this and in some other cases I retained the report until some responsible party told me my fees should be paid, and then I delivered them without payment. I have no memorandum of any date when I advised with some responsible party who would pay my fees in this case, and cannot say.

Q. With reference to the date of the death of Walton Dwight, which was the 15th of November, 1878, how long before that date, according to the best of your recollection, was it that you notified anybody of the fact that your report was ready?  
 569 A. I am unable to say; I have no means of knowing; I can't state whether or not my report upon the question of discharge was in the possession of Mr. Dwight's attorney at the time I heard of his death, or whether it still remained in my possession; I have no recollection as to that; my impression is, I had delivered it; I do not remember; I have only an impression now; it has passed from my mind, and I didn't pay any attention to it; I have no recollection that I could rely on, on the subject, as to where that report was at the time I heard of Mr. Dwight's death.

Q. I desire to call your attention to what you  
 570 stated a moment ago, that shortly after your report was delivered you heard of Walton Dwight's death? A. Shortly after I made the report; I may have said, after I delivered it; I remember that; it was shortly after I made it; I am not able to say now, as matter of recollection, whether the report had actually passed out of my hands at the time I heard of his death.

Q. Have you any recollection at this time as to

whether any responsible person did at any time vouch for the fees in that case? A. Yes, sir, I recollect that; I couldn't say whether it was Orlow W. Chapman or Neri Pine, or Mr. Chapman through Mr. Pine; it strikes me they were both named, but I wouldn't be sure of it. I acted as Register in connection with the bankruptcy proceedings in the case of Mrs. Anna N. Dwight; August 30, 1878, I received the order referring it to me; on the 17th of October I held the first meeting of creditors, and adjourned without appointing an assignee; on the 19th of November I received some proofs of claims and filed them—I don't know that that was four days after Mr. Dwight's death; that is the date I have here; 2d of November was an adjourned meeting of creditors, which was adjourned to the 19th; on the 3d of December, 1878, the meeting in which the assignee was appointed was held; it had been adjourned from time to time until the 3d of December; on the 10th of December I received the bond approved, and issued an assignment; the assignee was Brown; I received and filed the inventory on the 24th of January, 1879; made copies of the assignments on the 27th of February, but she had an examination upon her application for her discharge, which, I think, was the 12th of November, 1879, but I haven't it stated sufficiently full here so that I can be sure about that; I think that is not correct; I think it was earlier, but I have failed to make a note of it; that is the time I made the report for her upon the final examination. She was examined in Binghamton, but then I think the objections were withdrawn, or something of that sort, as I understand it. The last I had to do with that application, and I think the last there was of it, was November 12, 1879, in which I made the final report, and received the fees in the matter of final application under rule 60 for her discharge; I wouldn't say positively that that was the date.

*Cross-examined by Mr. Newton :*

- Q. In the matter of Walton Dwight, you spoke of receiving brief and points August 15, from Pine and Millard ; I would ask you whether Mr. Pine represented the petitioner ? A. He did. Mr. Millard
- 574 represented the opposing creditors in that case, the First National Bank, I think ; in behalf of the opposing creditors he attended the whole examination and cross-examined the witnesses. In the case of Anna N. Dwight there were filed with me objections by creditors ; I cannot give the date of such action ; those all passed into the Clerk's office and I have no control of them now. The examination had of Mrs. Dwight in Binghamton, was under those objections, and was attended by Mr. Brooks of Syracuse, of counsel in behalf of the opposing creditors ; he cross-examined the witnesses. The
- 575 date of the first act on my part in connection with Mrs. Dwight's application which it was necessary to be reported to the Court was the 30th of August, 1878 ; that was the appearance before me for the purpose of an examination on his application to be adjudged a bankrupt ; probably I had received the order or something of that sort before. At that time an act had been passed repealing the Bankruptcy Act, but it didn't take effect until the first of September in that year. The proceedings in the case of Walton Dwight, and the examinations were all made with reference to the date of this petition. These examinations before me relate to the condi-
- 576 tion of the bankrupt's estate at the time of the filing of the petition in bankruptcy.

*Re-direct-examination by Mr. Larocque :*

Q. You stated that the hearing before you in the bankruptcy proceedings of Walter Dwight, were attended by Neri Pine in behalf of the petitioning creditors, and by Mr. Millard on behalf of the op-

posing creditors? A. Yes, I don't remember that Mrs. Dwight was one of the petitioning creditors; I don't remember; I think Mr. Pine appeared as solicitor for Mr. Dwight on his application for discharge; the brief in support of the application for discharge was sent to me by mail,—Mr. Pine was the solicitor; whether they were signed by counsel or not, I don't remember; I received them from Mr. Pine, I suppose. 577

Q. Then, if I understand you, Mr. Neri Pine was the solicitor for the creditors who put Mr. Dwight in bankruptcy, and also solicitor for Mr. Dwight on his application for discharge? A. That, I can't say; my impression is he appeared for Mr. Dwight, and whether his name was to the original papers by the creditors or not, I don't know; I understand that the repeal of the Bankrupt Act had no effect upon any pending cases. 578

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RUTH B. OWEN, called as a witness on behalf of the defendants, and sworn, testified as follows:

*Examined by Mr. Larocque:*

I reside at Windsor, in Broome county; have resided there all my life; my husband is living; I am a daughter of George Dusenbury; I do not reside in the same house with my father's family; I have my own separate establishment; that was so in 1878; I knew Mr. Walton Dwight in his lifetime. I spent the summer of 1878 at Windsor, at my home; if I was in Binghamton during that summer or autumn, it was only for a short time; I have no recollection; I presume I was over there and back; I remember Mr. Dwight coming to Windsor in the summer or early autumn of 1878; while there he was staying at my father's, I couldn't say how many times he came; his family were there that 579

- summer; they were staying at Mr. Dusenbury's; I do not recollect when Mr. Dwight first came there that season; during the months of September and October he was there several weeks but I can't tell as to the amount of time he actually spent there.
- 580 I was in the habit of seeing him constantly while there; he had no business while there; he was in the house part of the time; he hunted some, he spent several days hunting; he spent more or less time in shooting and hunting down to the time he came back to Binghamton. I first heard it suggested that Mr. Dwight was not well, after he left Windsor when he was sick at the Spaulding House, I don't recollect when he left Windsor; I should think it might be some time in October, but I can't tell; I have no means of knowing. I can't recollect how long it was before he died that he returned to Binghamton; it was several weeks, but
- 581 I couldn't tell the exact number, after I first heard that he complained of not being well that I heard he was dead.

Q. Did he continue his practice of hunting and shooting down to the time when he returned to Binghamton, or was there any change in his habits while he was there? A. There was no change in his habits. There would be several days he wouldn't go at all, and then again he would go for a day. I should say the weather was such as we ordinarily have; some days it rained and some days it was pleasant; I couldn't say whether it was cold or warm. I was

582 at the Spaulding House once after he returned from Windsor, and before he died, and I was there at the time of his death. He died on a Friday night; I was there on Wednesday of that week; Wednesday preceding his death. On that Wednesday it was probably between eleven and twelve o'clock, as near that time as I can tell when I went to Binghamton—I have no means of knowing, but I should judge it was about that time; I rode in;



Windsor is fourteen miles from Binghamton; I started soon after breakfast. When I got to the Spaulding House I think Mr. Dwight came into the room after I entered. I was in a sitting room, and I think he came into that room after I had arrived. That sitting room I speak of was in a detached building—cottage adjoining the hotel. It was on the first floor, and was on the left-hand side of the hall as you entered from out of doors; it was a front room on the left-hand side. As you went into the cottage it was the first room on the left-hand side—the sitting room of which I speak—and opening into that room in the rear of it was the bedroom; there was no access to that bedroom except through that sitting-room, so that in going in there you went into the hall and into the sitting-room, and in the further end of the sitting-room was a door which entered into the bedroom; that bed room had but one window in it—the windows on the side of the house—it looked out on the side and not in front; there was only one door which entered into the sitting room. 583

Q. Are you able to say how long it was after you had been in the sitting room on that day when Mr. Dwight came in? A. No, it was only a few minutes though; he was partly dressed; he didn't have on any coat; I think he had a shawl over his shoulders—I am not positive about it; he sat down in the sitting room with me, and we conversed together—no special conversation but only ordinary, social conversation of members of the family. 584

Q. How long did you remain in conversation with Mr. Dwight at that time? A. I left before dinner time, so it was but a short time; he remained there while I was in the house; when I left he was still in the sitting room, I think, I am not quite sure. 585

I returned to Windsor that afternoon; I next went to Binghamton, on the 15th of November, arriving at about the same time as I did before; I

went in the same way as before, by carriage ; Mr. Dwight was in the bedroom when I reached there ; I did not go into the bedroom ; I met Mrs. Dwight in the sitting room ; while I was there Mr. Dwight came into the room, dressed at that time in the same way he was before—partially dressed. I remained  
586 the rest of that day and night.

Q. At what time in the day was it that the barber came to trim Mr. Dwight's hair or beard ? A. In the forenoon, soon after he came into the room where I was ; it was a colored barber. Mr. Dwight had his hair trimmed, I think he didn't have his beard trimmed—at least not very much, if any ; he wore a full beard ; I was in the room while the trimming was being done ; that was before dinner. That room was the general sitting room of the family. In the afternoon I was in the room most of the time. After dinner he was in the bed  
587 room lying down ; I can't say that he was partially dressed ; I was in there ; so was Mrs. Dwight ; she was there part of the time and part of the time I was alone with him.

Q. Did anybody else come in to see Mr. Dwight while you were there on that day ? A. I think somebody called in the evening to see him ; I think it was Charles Sears, but I am not positive it was he ; I don't know but I was in Court when Mr. Loomis was on the stand ; I did not recognize him as having come in there with some papers then ; I recollect a gentleman coming in with some papers, on business with Mr. and  
588 Mrs. Dwight ; I recollect he had some papers with him, and had some business with Mr. and Mrs. Dwight ; I don't think there were any papers signed ; my recollection is, he acknowledged signing them ; I am not positive that Mr. Sears called there in the evening ; some one came to the door ; I didn't see him ; Mr. Dwight was not in the sitting room in the evening ; I recollect Dr. Burr, Jr., coming there about half-past nine ; I was not in

the room with Mr. Dwight while the doctor was there ; the doctor staid only a few minutes ; I can't give the time ; I heard the doctor talking with Mr. Dwight while he was there ; I don't know that I heard Mr. Dwight say to the doctor that he thought he was going to have a good night ; he did say so, though, in my hearing ; after the doctor chatted 589 with him a little while, the doctor went away.

I saw Mr. Charles Hull there that evening ; he came there perhaps between eight and nine ; I have no means of knowing ; Mrs. Dwight and I left the room very soon after the doctor left ; I said good night to Mr. Dwight before I went ; Mrs. Dwight and I occupied the room directly opposite the sitting room, or right across the hall on the other side of the cottage, on the right-hand side. Mrs. Dwight retired at the same time I did ; we both made our toilet for the night after going to our room, and went to bed and went to sleep. We left Mr. Charles 590 A. Hull in the room—in the sitting-room or bedroom, when we retired to our own room that night. I supposed Mr. Hull lived in Binghamton. There was no one else left in the room with Mr. Dwight when we went to bed. The next thing I heard that night after Mrs. Dwight and I had gone to our room and undressed and gone to bed, and gone to sleep, was a knock at the door ; I don't know that I can tell whether anything was said by the person who knocked at the door ; I am not positive whether anything was said or not ; I have no recollection ; Mrs. Dwight got up 591 instantly, and partially dressed herself, and left the room ; after she left, I got up and dressed myself, and left the room two or three minutes, perhaps, after she left ; she left the room a minute or two—as quick as she could dress—after the knocking at the door ; she didn't stop to make an elaborate toilet ; she went partially dressed, and I followed in a minute or two. When I left the room I

went into the sitting-room opposite, and from there into Mr. Dwight's bed-room.

Q. Who did you find in the sitting-room or bed-room, when you went in there? A. Mr. Hull, Mr. Spaulding, and Mrs. Dwight, no one else; this Mr. Spaulding was the proprietor of the hotel; I recollect him as being the proprietor of the hotel.

Q. Where were these people when you first went into the sitting-room or bed-room? A. They were standing in front of the bed.

Q. (Diagram shown witness.) Now, on this rough sketch I have drawn, that is supposed to represent the rooms there in the cottage; does that recall it to you? A. Yes; that is generally accurate.

(This diagram was afterwards introduced in evidence and marked Exhibit 51.)

593 The head of that bed was right there: the letter F represents the head of the bed. When I went into this room Mr. Spaulding, Mr. Hull and Mrs. Dwight were standing between the bed and the wash-stand, at the head of the bed. The letter G represents the wash-stand, they stood right around there, along beside the bed towards the window, the window was at the opposite end of the bed, and is represented by the letter "H." I was within a few feet of the bed, I was behind the rest of the persons in the room. I did not hear Mr. Dwight speak or make any motions after I went into that room.

594 Q. What was being done with him when you went into the room, if anything? A. I think Mr. Spaulding was giving him brandy, I can't say that they were holding him up; they stood between me and him; there were pillows or something that raised his head up; whether they were holding him up I am not able to say; they appeared to be trying to give him brandy; I heard them say it was brandy, and it smelled like

brandy ; I did not hear him make any motion or emit any sound while I was in that room.

Q. How long did they continue to give him brandy ? A. Only a short time—a few minutes, then Mr. Spaulding said he didn't swallow it, and Mrs. Dwight said we must do something else, and some one suggested hot water to put his hands in, and I 595 rung the bell, which was right close by the door, and the water was brought, and they put his hands into the hot water ; no effect was observed after putting his hands into hot water.

Q. What next was done ? A. I went out of the room then into the sitting room ; I think his hands were in the hot water at the time I left the room ; I did not come back in the room ; Mrs. Dwight stayed in the room.

Q. So far as you know, did he ever speak or move, or give any sign of life after that time ? A. No.

I do not know at what time the undertaker arrived there that night. While I was in the 596 sitting room, and after I had left the bed room, Dr. Burr, senior, came ; I didn't go back to my own room—I stayed in the sitting room—excepting to go back into my room to get Mrs. Dwight's dress ; I did not spend the rest of the night there ; I went back into that room and stayed until the undertaker came ; I was in there, I think, when the undertaker came ; I can't say when it was that I went back to my own room ; I didn't look ; I didn't go back to that room across the hall that night—we went into the room at the end of the hall ; I left about as soon as the undertaker came.

Q. How long was it after you were first called 597 and went into Mrs. Dwight's room before the undertaker came ? A. I should think it was over half an hour, and whether it was an hour or more than an hour I couldn't say.

Q. What difference in time was there between the arrival of the undertaker and the doctor ? and which got there first ? A. I can't tell ; I can't remember.



Q. It was about the same time ? A. Yes ; nearly the same time, I should think.

Q. I don't think you have stated the hour at which some one knocked on your door ; you said you went to bed about half-past nine, and you retired and made arrangements for the night, and  
598 had gone to bed and gone to sleep, when some one knocked on the door ? A. I remember some one said it was about eleven o'clock, but I had looked at no timepiece myself.

Q. Is that your best recollection of the time ? A. It was about eleven o'clock, I should think.

Q. I understand you to say that after you left the sitting-room, after the doctor had been there, and the undertaker had been there, you didn't go into the room where you had been ? A. No, we went into the room at the end of the hall ; we went to bed there later, after twelve o'clock ; we were there all  
599 the next day ; neither myself nor Mrs. Dwight left the room at the end of the hall until we got up for the next day. I have no personal knowledge of what took place in the sitting room or bed room after I left. This was November 15th ; the sitting room adjoining Mr. Dwight's bed room was warmed with a coal stove ; it was a low stove with an open grate, called a Franklin stove ; it was an open fire grate set in a stove ; there was a fire in this open grate. I do not recollect who it was that sent for the doctor and undertaker that night ; I recollect hearing something said on the subject of sending for them,  
600 but I don't know who sent for the doctor. I heard some one say when they went home they could stop for the undertaker, but who it was I don't know.

Q. Between the time you were summoned with the rap on the door, about eleven o'clock, and went into the room, and the time when the doctor and the undertaker arrived, what other persons besides yourself, Mr. Hull, Mr. Spaulding and Mrs.

Dwight were in those rooms? A. The boy who brought the warm water was there; he was a servant in the hotel, I think; and a Mrs. Spaulding was in the room, and I think there was another lady with her, but I didn't know who it was; that was not the wife of the hotel keeper; I understood that she was the wife of his 601 brother, but I wasn't acquainted with them.

Q. Was there any other person there than those you have mentioned? A. I remember of seeing no others, and there were no others I knew, if there were any others there.

This bed that was occupied by Mr. Dwight was of black walnut, with a high head board, spaces carved out of it—something like that; the head board was ordinary height; it was what was called a French bedstead—not a post bedstead.

*Cross-examination by Mr. Newton :*

602

(Diagram shown witness.) The bed room spoken of was a small room; the width of the room was such that there was only space beside the bed for a person to crowd between the bed and the wall. The length of the bed was equal to the entire width of the room, less the space where a person could crowd through; I should say that the proportion of the room which was occupied by the bed, as I remember, was about a third.

Q. Was there another article of furniture in the room besides the bed and the stand you have spoken of? A. There was a commode 603 there that was located by the window, near the back corner of the room opposite the door that went into the bed room, between the window and the corner; opposite the entrance to the sitting room occupied by Mr. and Mrs. Dwight, there was a bed room opposite that hall on this side (referring to diagram); that bed room was occupied by Mrs. Dwight and myself on this

evening in question—the early part of the night. There was a room in the rear of the sitting room—a bed room, in that portion of the house back of the bed room, where he died, which I occupied that night after the death of Mr. Dwight. This cottage was connected towards the rear of it  
604 with the hotel; this window in the bed-room in which Mr. Dwight died opened out towards the hotel; I can't give the distance of this window from the side of the hotel building; it was near, but in feet I could not give the distance at all; there were windows upon that side of the hotel looking towards this bed-room; there was no fire-place in the sitting room; it was an open stove, located about at the letter "J" on this diagram; and the chimney at this corner marked "K"; I was in Mr. Dwight's bed room after dark before we retired, and I think there was a light there; I am  
605 sure there was; it was gas; I should say that the light was situated in about the centre of the room, but I cannot say positively where it was. At the time I came there on the day of his death I remember that he was being bathed by Mr. Hermans; I should say it was a colored barber that trimmed his beard; of that I have no positive recollection; I had talked with Mr. Dwight that day; during the day he was not at any time dressed any more than I have mentioned; he spoke that day of his feelings and of his health, and how he felt. I was there when Mrs. Dwight left him that night; I was in the sitting room when she left him;  
606 she bade him good night; I noticed nothing when they separated further than their bidding each other good night; I think they kissed each other; Mr. Hull was there at that time; after leaving the room Mrs. Dwight and I immediately proceeded to our room; we went out on the piazza of the hotel and walked there perhaps fifteen minutes before going to our room; there was no one with us during that fifteen minutes; then we went to our

room ; we retired at once ; after retiring, I think I had no conversation with Mrs. Dwight ; I didn't lay awake any length of time ; I am not positive whether Mrs. Dwight had or had not gone to sleep.

Q. When you were there, either of these days, state whether anyone else had charge of Mr. Dwight, or cared for him, besides his wife ? A. 607  
No, sir ; not while I was there, excepting the care Mr. Hermans had of him in giving him his bath.

Q. Was that so both days you were there ? A.  
Yes ; I don't think the doctor was there the first day I was there ; I do not remember whether the doctor was there the second day, before evening, or not.

Q. How long after you came into the room before the other Mr. Spaulding and his wife came in ? A.  
Not until after I had gone out into the sitting room. I did not know Peter Van Vredenburg ; there was several in the room, but I didn't know any of them. 608  
They were in the sitting room after they all left the bed-room ; there was several in the bed-room ; persons came and went. I know where Dr. Burr lives, and I know where the Spaulding House was.

Q. How long was it before Burr was there, to your best recollection ? A. I don't know ; the doctor came in after they had all left the bed-room ; I can't tell the time ; I do not know who was sent after him. I think Mr. Dwight ate something for his dinner during the time I was there that day ; I do not remember what it was.

Q. You have spoken of Mr. Dwight being at your home, and your village, during the summer ; 609  
where had he been in the winter and summer before, do you remember ? A. In Chicago.

Q. And during the winter and spring, do you know whether he had been home on any other occasion or occasions ? A. I can't say, positively ; after returning from Chicago that summer, I think he first stopped at Windsor ; he might have stopped a day or two at Binghamton and then come to

Windsor; his wife was living at Windsor during the time he was in Chicago, and also during the summer after his return from Chicago; the boy was at Windsor; his age now is fifteen; I had no boy; there was another boy living there, in the family of my father.

610 Q. Something has been said about Mr. Dwight's swimming there that season, do you know of his going swimming that summer? A. Yes, sir.

Q. How many times? A. Once or twice a week perhaps; his son Frank and two boys who lived across the street, Harry and Walter Chase, and another little boy of the same age, Earny Chaffee, went with him; I did not know of his going swimming except with them; I don't know of their going at any time except after supper; I should think that that continued until about the time he left Windsor, but I can't say positively. I knew of his going hunting and coming back evenings.

611 Q. Did you ever know of his going swimming after the fatigue of hunting? A. No.

Q. Where did he spend the most of his time when he was there at Windsor? A. In my father's house, I think. My father was a farmer and he has a store across the street from his house; he has no place of business besides the store. He had a bank there, but that was in the store.

Q. Do you know whether he spent much of his time at the store of your father? A. He was there probably some; he would go there and stay some and then go back and stay there awhile. I lived 612 less than a quarter of a mile from my father's house; it was quite close; on the next street.

Q. About how frequently were you at home—at your father's? A. Every day, and sometimes oftener. Mrs. Dwight spent her time while she was dwelling there at my father's.

Q. You spoke of your remaining out in the sitting room after the death of Mr. Dwight that night—have you any means of knowing what



length of time you spent there before you retired again? A. No; I kept no track of time that night, after they found he was dead and left the room, my sister stayed with me until I left.

Q. Do you know whether she had any conversation during that time with you? A. I think not.

613

*Re-direct-examination by Mr. Larocque :*

Q. This cottage in which these rooms were, which was a separate building from the hotel, was connected with the hotel by a covered passage in the second story? A. I know of no other connection than that; they stood detached with the exception of that connection between the two houses through the upper story. I don't know where the office in the hotel was.

I was not present when Col. Dwight was bathed; all I know upon that subject is what some one told me. I don't think I saw Mr. Hermans there on the Wednesday on which I went to Binghamton; I don't remember of seeing him there that day.

614

Q. When you were asked on your direct and cross-examination about what occurred upon this day upon which Mr. Dwight died, do you recollect now whether you mentioned Mr. Hermans' name at all as being present there that day? A. I don't remember, perhaps I did not.

Q. Are you able to remember whether or not you saw Mr. Hermans there that day? A. Yes; the first I saw of him he came out of the bed-room; that was very soon after I got there, he came out of the bed-room into the sitting room; he remained in the sitting room only a few minutes; I understood that he left the house then.

615

Q. When you said something about Mr. Hermans being the only one except Mrs. Dwight who had charge of Col. Dwight during his sickness, you only spoke of what other people had told you, didn't you? Whatever you said upon that subject was the

result of what other people told you? A. Yes, sir. When Mr. Dwight was staying at Windsor with his wife, they were at the house of Mr. Dusenbury, my father, my house was about a quarter of a mile distant on another street; I was in the habit of  
 616 visiting my father's house daily; I was not in the habit of going with Mr. Dwight and these boys when they were going to swim, or when he was going hunting or fishing. I have no means of knowing whether he bathed at other times or swam at other times that when it was announced he was going with the boys.

Q. It would have been perfectly possible for him while hunting to have swam the river without telling you? A. Sometimes he couldn't for he went hunting on the hills where he couldn't have swam the river.

Q. But you didn't follow him to know where he  
 617 went? A. No, he was sometimes out for the whole day; I know nothing at all about his bathing except what other people told me.

Q. I understood you to say on your cross-examination that according to your recollection you didn't recollect seeing the doctor there on the occasion of your first visit on the Wednesday?  
 A. I do not remember.

Q. Did you or not understand that Mr. Hull had some sort of charge of Mr. Dwight at this time?  
 A. He was to take care of him that night.

Q. Do you know whether Mr. Hull had ever been there with Mr. Dwight a night before? A. I do not  
 618 know of my own knowledge.

Q. You were asked whether or not Mr. Dwight had returned to Binghamton in the winter or spring of 1878 after he had been to Chicago; don't you know he was there in connection with his bankruptcy proceedings? A. I do not know; I couldn't say positively from my own remembrance.

Q. Didn't you hear he was being examined in bankruptcy in the bankruptcy proceedings in February? A. I probably did hear of it; I knew

he had an application for his discharge in bankruptcy pending.

Q. You said something about the light in those rooms on the night of Mr. Dwight's death ; what sort of light was there in the sitting room ? A. Gas light—chandelier, I think it was from the ceiling.

Q. How was it in the room Mr. Dwight occupied ? 619

A. It was gas, and I am not sure but I think that that was from the ceiling also ; but I am not positive.

Q. Somewhere about the middle of the room ?

A. I should say that it was, according to my recollection.

I said on my cross-examination that the only furniture in this room consisted of the bedstead, a wash stand that was near the bedstead, and the commode that was in the corner by the window ; there was only one chair in the room ; that is all I remember now ; there might have been one more in 620 during the afternoon, but if it was it was taken out ; the medicines were kept on the wash stand ; I noticed there were bottles there ; there were several. I was not in the bedroom the first time I was there.

*Re-cross-examination by Mr. Newton :*

Q. You state you only knew of his going swimming from what was said, did you see him and the boys start to go swimming ? A. Yes, saying they were going ; and I saw them return saying they had been. 621

Q. *By Mr. Laroque*—When they started upon these expeditions in which it was said they were going to swim, did they go from your house or from your father's house ? A. From my father's house.

ROBERT BROWN, called as a witness, on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in Binghamton, I have been in the army,  
622 I had the title of Colonel before I went into the army and after. I was not Colonel in the army but I was afterwards in the military ; I came to Binghamton in 1867 and have resided there ever since.

I was in Binghamton during the year 1878 : I had connection with the Phoenix Mutual Life Insurance Company of Hartford, Connecticut ; an application for insurance in that company on the life of Walton Dwight passed through my hands in the summer of 1878 ; it was not written up by me but by a man that worked with me. Henry C. Hermans was connected with me in business at that time ; he was at work with me under an arrangement we made, we were a kind of partners at that time ; I employed him in connection with my business ; that is the way it came about.

Q. (Paper handed witness.) I show you an original application dated August 15th, 1878, presented by Walton Dwight to the Phenix Mutual Life Insurance Company, which is in evidence as Exhibit No. 19 ; was it your custom to take duplicates of the applications which were made ? A. Yes, sir ; that is my custom. I didn't write this application ; Mr. Hermans wrote it up, and I looked afterwards, but never succeeded in finding a duplicate application in my office ; I did not have a duplicate of it ;  
624 I looked a number of times to find it afterwards ; usually when I make an application I always make a copy of it, and whether he neglected it or not I don't know ; I do not remember ever having had the copy or duplicate of that application ; I recollect seeing this, and I recollect having a conversation with Col. Dwight before he came in to take

the policy ; I only recollect when I first saw the application from the date upon this now ; that refreshes my recollection as to the transaction ; at that time I was acting as agent of the Phenix Company, and the application I have spoken of came to me as being the agent of that company ; it was written up and returned for policy, and was re- 625  
turned back ; it came to my office in Binghamton about the 15th ; that is as near as I can recollect ; we never got a policy ; that application was forwarded to the company as soon as I received it, and no policy was ever returned.

*Cross-examined by Mr. Smith :*

I said I was a Colonel in the military before I went into the army, and afterwards ; when I speak of my services in the army I referred to the war for the Union ; I didn't refer to the war at the tunnel at all ; I was in the other war ; was not taken a 626  
prisoner that I know of ; I remember all about it ; I remember all the papers that came into my office at Binghamton as an insurance agent ; I think I have some recollection of them all—not every single paper ; I have a great many papers ; I drew my applications mostly ; I think I remember every single insurance application ; I have got them on file ; all that I have taken are there on my books ; I keep all my applications on file, that is, all my policies that I take ; I have a book and register them all ; I don't have any of my applications, I keep copies of all my applications ; every one I 627  
write up I keep copies of ; I know I never wrote up an application for Mr. Dwight ; it is those which I write up of which I keep copies.

Q. And as to the other insurance applications that are in this world besides those you wrote up, I suppose you have no memory ? A. No.



*Re-direct-examination by Mr. Larocque :*

Q. In this particular business of the Phenix Mutual you were the agent of the company, weren't you? A. Yes; I have also said that Hermans was employed by me; and this particular application  
 628 came to my office as the office of the Phenix Mutual Insurance Company; I recollect the transaction.

Q. Who personally forwarded the application to the Phenix Mutual on Dwight's life? A. Mr. Hermans forwarded that as my agent.

*Re-cross-examination by Mr. Smith :*

Q. You and Hermans must have had pretty intimate relations then? A. We were working together then in insurance matters, you mean.

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NORMAN W. BATCHELDER, called as a witness on behalf of the defendants and sworn, testified as follows:

*Examined by Mr. Larocque :*

I reside at Albany, New-York; have resided there since June, 1876; during the year 1878 was the General Agent for the Mutual Benefit Life Insurance Company, of Newark, New Jersey; my agency for that company began, I think, in 1874;  
 630 I had a local agent at Binghamton; his name is John B. Bowen; I received from Mr. Bowen in the summer of 1878 an application for a policy on the life of Walton Dwight, addressed to the Mutual Benefit Company. (Exhibit 22 handed witness.) That is the application to which I refer; at the time I received this Exhibit 22 I had never heard of Walton Dwight, and had never seen him; I forwarded the application to the home office, and re-

ceived a communication from the home office on  
 the subject of the application so forwarded ; it was  
 in the form of a letter ; at the time I received that  
 letter I had never met Mr. Bowen, who was the  
 local agent at Binghamton ; I had had corre-  
 spondence with him, but had never met him per-  
 sonally ; on the receipt of that communication 631  
 from the home office I had some correspondence  
 with Mr. Bowen ; I notified him that I was coming to  
 Binghamton ; I made an appointment to meet him ; I  
 went to Binghamton, I think, on the 12th of August,  
 1878 ; the 12th or 13th, I wouldn't state positive-  
 ly which ; I went by train from Albany ; he met me  
 at the depot ; I made his acquaintance there for the  
 first time ; from the depot we went to Mr. Bowen's  
 office ; we passed the post office on the way ; Mr.  
 Bowen stopped at the post office. After he had  
 stopped at the post office and before I reached his  
 own office, Walton Dwight accosted me ; he intro-  
 duced himself to me, and went with us to Mr. 632  
 Bowen's office ; I showed him there the letter I  
 had received from the Mutual Benefit Home Office ;  
 he sat at the desk in Mr. Bowen's office and an-  
 swered the letter at my suggestion ; I enclosed the  
 answer he wrote with a letter which I wrote to the  
 company at the same time and forwarded it to  
 them. At that time I had some conversation with  
 Mr. Dwight upon the subject of an intention on his  
 part of applying for life insurance ; I may not be  
 able to state the conversation in the precise words ;  
 the substance of it is : I understood from Mr.  
 Dwight that he wanted to take out a large amount 633  
 of insurance ; I don't know that he named the  
 amount definitely ; I couldn't state that he said  
 about how much he wanted ; he said that there  
 were no general agents there at Binghamton and  
 that I seemed to understand the business, and he  
 would place a hundred thousand or such a matter  
 with me or let me place it for him ; I showed him  
 a list of all the companies ; I had a list ; nearly all

the leading companies; we selected such companies as I recommended to him that were good, solvent companies; we looked through the list and checked off the companies that he would like to apply for insurance in; he said he would take out the insurance in those companies; and I didn't have the forms for the applications with me; and I was obliged to return to Albany to get those forms from the different companies; there was an arrangement made for a future meeting with Mr. Dwight; this arrangement was for me to return when I had got the applications,—the forms in shape,—so we could complete them. I went back to Albany, and set to work to get the blank forms from different people—the agents of other companies; it took me a week, if I recollect right, to get them; then I went back to Binghamton; that, I think, was the 19th or 20th of August; I had notified Mr. Dwight in advance of when I would be there; when I arrived at Binghamton at that time I went to the Spaulding House; I found Mr. Dwight there; that was on the 19th or 20th of August, 1878. We attended to the business in the Spaulding House, I think it was in the main building; I am not positive; I think I slept in a room in the cottage in the rear at some time during my stay there; my impression is that the room where this business was done was on the second floor of the main building of the house; I went to work to prepare applications; no one but Mr. Dwight and myself took part in the business of writing out the applications or advising about them; I did not see Mr. Bowen; no one but Mr. Dwight and myself did the business.

Q. You were engaged in that business in Binghamton, this employment of Mr. Dwight's for how long? A. Two or three days at that time, I should think; that time was occupied in writing the applications, filling up these blanks and having the medical examinations. I could not say posi-

tively when I left Binghamton, but I should say about the 23d of August. Down to the time of this first visit to Binghamton in August, 1878, I had neither seen nor heard of Mr. Dwight to my knowledge. I got through with these applications, I think, on the 23d of August. I do not recollect whether or not at that time, any conclusion had 637 been reached by the Mutual Benefit people on the subject of the application which had been first forwarded to them; I had not before this 23d of August received a five thousand dollar policy from the Mutual Benefit on the life of Mr. Dwight—I did receive such a policy; I returned to Albany with the applications which had been prepared.

Q. See whether you can recollect whether these were the applications referred to; was there one for the Mutual Benefit? A. No, not in the applications which I wrote. There were applications for the Berkshire, the Massachusetts Mutual, the National Vermont, the New England Mutual, the New-York Life, the Penn Mutual, the Travellers, the Union Mutual of Maine, the United States, the Etna, the State Mutual. Those applications were all prepared during these days when I was at Binghamton between the 20th and 23d; I took those applications back with me to Albany; I sent them to the various companies or delivered them to their general agents. I went to New-York the evening or the night of the 24th of August. 638

Q. Before you went to New-York had any action been taken to your knowledge by the Mutual Benefit on Mr. Dwight's former application? A. 639 Yes, I think they had issued a policy for five thousand dollars. I made an appointment to meet Mr. Dwight in New-York, before I left Albany. One purpose of making it was to visit the Mutual Benefit office and see if they wouldn't give him more insurance on the application which he made for fifteen thousand dollars. The application had been made for \$15,000 and they had granted a policy

for \$5,000; he agreed to meet me in New-York. I left Albany on the night of the 24th, which was Sunday, if I recollect right, and arrived on Monday morning on the 25th; after arriving I went to the St. Nicholas Hotel; I am not  
640 positive that I found him there when I arrived but I met him there in the forenoon of that day. I do not recollect whether, before I had left Albany to go to New-York, I had an interview with Mr. Winship, of the Union Mutual; I had received a policy from the Union Mutual Company; I took the policy in the Union Mutual Company with me for the purpose of delivery to Mr. Dwight, and collecting the premium; I had also two other policies that had come in by that time on these applications; on the morning of the 25th, when I met Mr. Dwight at the St. Nicholas Hotel, in New-York, I had these policies in my  
641 possession, and I handed him the policies and he looked at them and said he guessed they were all right; he said that if it didn't make any difference with me, or if I didn't insist upon it, he would prefer to have me hold the policies or keep them until I got the others together, and gave as a reason that he was not going back to Binghamton—he was intending to be absent for several days, and he didn't care about carrying the policies around with him, and if it made no difference to me he wouldn't pay the premium then, but wait until I got them all together; and he returned to me the policies; they remained in my possession. I had my wife  
642 with me on this trip. On that same day I went with Mr. Dwight to the Mutual Benefit office; I think we went that same day, Monday; the next day being Tuesday I went in the afternoon with Mr. Dwight to Brighton Beach, where we spent the evening; we met at Brighton Beach the ex-Vice-President of the Mutual Benefit, Mr. Gobelle; and we returned again that night to the St. Nicholas Hotel; it was quite late when we got there; I should think elev-



en o'clock—perhaps half-past eleven ; Mr. Dwight and I entered the hotel together ; we went to the office up to the desk together ; the clerk there handed me a telegram (paper handed witness) ; that is the despatch that was handed me at that time ; Mr. Dwight was beside me when the dispatch was handed to me ; I handed it to him to look at. 643

The counsel for the defendants then introduced the telegram referred to by the witness in evidence. It was marked Exhibit 52.

This was received on the 26th of August ; I showed this dispatch to Mr. Dwight ; W. Frank Winship was the general agent at Albany of the Union Mutual of Maine—the person from whom the Union Mutual policy had come to my possession, and the person who had entrusted it to me to deliver and collect the premium ; when I showed this telegram to Mr. Dwight, he said it was all foolishness ; he told me to telegraph him that the policy was delivered ; he went with me to the telegraph office immediately after I had showed him this dispatch (paper handed witness) ; I recognize that paper ; the telegraph office we went to was on Broadway, above the St. Nicholas Hotel ; he told me to go with him to the telegraph office, and I went ; when we got there he said “telegraph him” so and so ; I have preserved the copy of what he said to me ; that is the copy ; I did what he told me to do ; and I then sent that dispatch, the language of which was Mr. Dwight's. 644

The counsel for the defendants then introduced in evidence the telegram referred to by the witness. It was marked Exhibit No. 53. 645

While we were in the telegraph office Mr. Dwight said we had better send another dispatch to the president of the company, Mr. DeWitt ; he said he knew Mr. DeWitt, and he said it was only some

of his damned foolishness—the policies were his ; a dispatch was prepared to be sent to Mr. DeWitt while he was still in the telegraph office ; Mr. Dwight dictated to me the dispatch, and I wrote it from his dictation ; I preserved a copy of what he wrote (paper handed to witness) ; that is a copy of  
 646 what I then wrote at his dictation.

The counsel for the defendants then introduced the dispatch referred to by the witness in evidence. It was marked Exhibit<sup>54</sup>.

That dispatch was sent to Mr. DeWitt on that occasion ; that business being disposed of we returned to the hotel ; it was then about midnight, I should think ; I parted with Colonel Dwight immediately on returning to the hotel ; no definite time was appointed for my going to Binghamton on the subject of the policies ; I was to communicate with  
 647 him ; at the time of these transactions on the night of the 26th nothing had, to my recollection, taken place between me and Colonel Dwight with reference to the payment of the premiums on the Union Mutual policy, or the custody of the policies other than what I have stated ; after the policies had been shown to Colonel Dwight, and returned to me on the morning of the 25th of August, as has been testified to by me, they next went out of my custody on the 6th of September.

Q. At the time when this dispatch was received, and these dispatches dictated by Mr. Dwight were sent in answer, where were the policies ? A. I had them ; I don't remember whether I had them in my pocket, or bag, or satchel ; they remained in my custody until the 6th of September ; up to that time no premium had been received by me from Colonel Dwight on account of that policy of the Union Mutual, nor any money or valuable thing in consideration, nor had the same been re-

ceived from any one else than Colonel Dwight, to my knowledge.

Q. You would know if they had been paid? A. I should be likely to; yes.

Q. (Paper handed witness.) When did you next hear from Mr. Dwight? I show you a memorandum which may refresh your memory? A. The 649  
4th of September; I heard from him by ordinary means of communication—by telegraph; I have in my hands the telegram I received from him.

The counsel for the defendants then introduced the telegram referred to, in evidence. It was marked Exhibit No. 55.

I answered that dispatch, and kept a copy of what I sent. (Paper handed witness.) That is a copy of what I sent.

The counsel for the defendants introduced the copy of telegram referred to in evidence. It was marked Exhibit No. 56. 650

I went to Binghamton on the 6th, and found Colonel Dwight there; I found him at the Spaulding House; I had then received most of the rest of these policies for which applications had been prepared by me; I mentioned that fact to Colonel Dwight; then we went to Mr. Pine's office; Mr. Dwight invited me to go to Mr. Pine's office with him, and I understood Mr. Pine to be a friend of Mr. Dwight's; I went to Mr. Pine's office in company with Mr. Dwight; I delivered him the policies I had; I think there were nine policies, amounting in the aggregate to \$85,000 of insurance; Mr. Dwight examined the policies there; I think Mr. Pine examined the policies; they were there together in the office, and they both went over them; I couldn't say positively just what Mr. Pine said; he appeared to be examining them in connection with Mr. Dwight; at the close of the examination Mr. Dwight settled the premiums and paid me; my recollection is that he gave me about \$400 in 651

currency and \$350 in two checks,—Mr. McDonald's checks ; I understood that Mr. McDonald was a brother-in-law of Mr. Dwight's ; I could not state positively the amount of the checks, nor on what bank they were drawn, nor to whose order they were made payable on the face, I could not state  
 652 whether Dwight or Pine endorsed them or either of them before they were handed to me. That was the first thing I had received from any source on account of premiums on those policies or either of them.

*Cross-examination by Mr. Newton :*

I was born in 1831, the 24th of October, according to the family record ; I was agent for the New Jersey Mutual Benefit Company from 1876 ; I was previously to that engaged in the insurance business ; I was in Boston, Massachusetts, about a  
 653 year, and a year and a half I was located at Fair Haven, Vermont ; was in the insurance business in those places ; I should say those years were 1874 and 1875 ; I don't remember whether I commenced in 1873 or 1874 ; at those places I was agent of the Mutual Benefit of New Jersey ; and I resided with my family at both those times in those places ; I moved to Albany from Fair Haven, Vermont, and have since resided at Albany ; I continue in that same business as agent for the United States Life, of New-York City ; I don't know when my connection with the New Jersey Company ceased ; it was  
 654 in 1879 or 1880 ; before that ceased I had no other business than as agent of that company ; since that time I have been connected, for a short time, with the Northwestern ; I was with the Northwestern, I think, a year and a half ; I was connected with the New-York Life a short time immediately after my connection with the New Jersey Company ceased ; I am now connected with the United States Life ; I was an agent for the Equitable of New-York City for a

few months while I was residing in Boston ; I don't remember of being connected with any other company ; I have not had two of those at a time at any time. Before I went into insmance, I lived in Wisconsin five years, and in Michigan thirteen years ; was in the marble business there ; my first residence west was in Wisconsin ; I have lived in Janesville, Rock County, Wisconsin, and Ypsilanti, Michigan ; I went from Fair Haven, Vermont, west. I couldn't say, positively, from whom I got the blank application in the Berkshire Insurance Company ; I couldn't tell where I got one for the Insurance Company of Worcester—I don't remember ; I got the blank of the Penn Mutual from their agent in Albany, Hiram Blanchard, I think ; I don't think I got it of Blanchard himself ; I think he was away from home ; I got it at his office ; I couldn't tell you the name of the person ; I got the blank of the 'Travellers' Insurance Company from their agent at Albany, George Sherman—I remember that ; I got that of the Union Mutual of Maine from Mr. Frank Winship at Albany ; that of the New England Mutual, I can't say, positively, from whom I got it ; I can't say, positively, from whom I got the blank of the National Vermont Insurance Company ; I got that of the United States from E. E. Clapp, then agent or sub-agent at Binghamton ; that of the Etna of Hartford from C. D. Paul ; I don't know what "C" stands for in his name ; I couldn't say where I got that of the State Mutual.

Q. How happens it that you don't remember these things? A. Well, I was getting quite a number of applications and I don't remember distinctly all that transpired or was said or done at that time ; my memory is not remarkably good.

Q. Do you know from whom you received the two policies other than the New Jersey Mutual,



that you carried to New-York? A. No, sir, I couldn't swear positively.

Q. Do you know which two policies, received through your hands, those two were? A. Yes, they were those of the Berkshire and the National of Vermont. The Berkshire has its general office at Springfield; that is my recollection of it; I couldn't say positively on what day I got that policy; I do not remember what date that policy I had bears, only as I refer to my correspondence and my record of it; I have no recollection. The others besides the Berkshire that I carried to New-York, were those of the National Vermont and the Union Mutual; the National Vermont has its office at Montpelier, Vermont; I did not go to Montpelier, Vermont; I cannot tell from recollection, on what day I received its policy. Most of these nine, ten or eleven applications which I took home with me on the 23d, were in my handwriting.

Q. So far as Dwight's statement was concerned, were they all in your handwriting? A. I think they were all or nearly all; there might have been an exception; I think that the application in the Travellers' was filled in by the agent of the Travellers', Mr. Sherman of Albany; he was not in Binghamton. Mr. Dwight did not fill any of those applications, to my knowledge or write any of them, only his signature.

The counsel for the defendant then introduced in evidence certain policies of insurance covering the life of Walton Dwight, issued on the applications in evidence, and produced by the plaintiffs, that is to say:

Policy of the Brooklyn Life Insurance Company, of New-York, for \$5,000, together with premium receipt, both dated 31st August, 1878 (marked Exhibit 57).

Policy of the Berkshire Life Insurance Company,

for \$10,000, together with premium receipt, dated 24th August, 1878 (marked Exhibit 58).

Policy of the Homeopathic Life Insurance Company, of the City of New-York, for \$5,000, dated the 4th day of September, 1878 (marked Exhibit 59).

Policy of the Manhattan Life Insurance Company of New-York, for \$5,000, dated August 24, 1878 (marked Exhibit 60). 661

Policy of the Manhattan Life Insurance Company of New-York, for \$5,000, dated the 27th day of August, 1878 (marked Exhibit 61).

Policy of the Manhattan Life Insurance Company of New-York, for \$5,000, dated September 4, 1878, together with a premium receipt attached (marked Exhibit 62).

Policy of the Metropolitan Insurance Company of New-York, for \$10,000, dated September 1, 1878, together with the premium receipt attached (marked Exhibit 63). 662

Policy of the Mutual Benefit Life Insurance Company of New Jersey, for \$5,000, dated the 1st of August, 1878 (marked Exhibit 64).

Policy of the Mutual Benefit Life Insurance Company of New Jersey, for \$5,000, dated the 1st day of August, 1878 (marked Exhibit 65).

Policy of the National Life Insurance Company of Montpelier, Vermont, for \$10,000, dated August 23d, 1878 (marked Exhibit 66).

Policy of the New England Mutual Life Insurance Company, for \$10,000, dated September 2, 1878 (marked Exhibit 67). 663

Policy of the New York Life Insurance Company, for \$10,000, dated the 27th of August, 1878, with copy application attached (marked Exhibit 68).

Policy of the North Western Mutual Life Insurance Company, for \$5,000, dated August 23, 1878, copy application being attached (marked Exhibit 69).

Policy of the North Western Mutual Life, for

\$3,000, dated August 23d, 1878, a copy of the application being attached (marked Exhibit 70).

Policy of the same Company for \$1,000, dated August 23, 1878, attached to which was copy of the same application (marked Exhibit 71).

664 Policy of the same Company for \$5,000, dated 23d of August, 1878, attached to which was a copy of same application (marked Exhibit 72).

Policy of the State Mutual Life Insurance Company of Worcester, Massachusetts, for \$10,000, dated September 1st, 1878 (marked Exhibit 73).

Policy of the 'Travellers' Insurance Company, life department, of Hartford, Connecticut, for \$10,000, dated August 28th, 1878, attached to which was a memorandum receipt, dated August 28th, 1878 (marked Exhibit 74).

665 Policy of the Washington Life Insurance Company, for \$5,000, dated 19th August, 1878 (marked Exhibit 75).

Policy of the same company for \$500, dated 19th August, 1878 (marked Exhibit 76).

Policy of the same company for \$500, dated August 19th, 1878 (marked Exhibit 77).

Policy of the same company, for \$500, dated 19th August, 1878 (marked Exhibit 78).

Policy of the same company, for \$500, dated 19th August, 1878 (marked Exhibit 79).

Policy of insurance of the same company, for \$2,000, dated 19th August, 1878 (marked Exhibit 80).

666 Policy of the same company, for \$500, dated 19th August, 1878 (marked Exhibit 81).

Policy of the same company, for \$500, dated 19th August, 1878 (marked Exhibit 82).

Policy of the Manhattan Life Insurance Company for \$5,000, dated 10th September, 1878 (marked Exhibit 86).

Policy of the Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts, for

\$10,000, dated the 3d day of September, 1878 (marked Exhibit 87).

Policy of the Northwestern Mutual Life Insurance Company, for \$1,000, dated August 23d, 1878 (marked Exhibit 88).

Policy of the United States Life Insurance Company of the city of New-York, for \$10,000, dated August 31, 1878 (marked Exhibit 89). 667

Policy of the Etna Life Insurance Company of Hartford, for \$10,000, dated August 24th, 1878, countersigned at Albany, September 6th, 1878 (marked Exhibit 90).

Policy of Insurance of the Union Mutual Life Insurance Company of Maine, for \$10,000, dated 23d of August, 1878 (marked Exhibit 91).

The material portions of these policies are contained in the Appendix.

The counsel for the defendants also introduced in evidence the will of Walton Dwight, marked Exhibit 92. 668

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The counsel for the defendants further to maintain and prove the said issues on their part, called as a witness, CHARLES H. PORTER, who being duly sworn, testified as follows :

*Examined by Mr. Russell :*

I reside in Albany ; have lived there about 26 years ; I am a physician and chemist ; have been such for about 26 years ; during my professional practice as physician and chemist I have practiced at Albany ; in addition to being a practicing physician, surgeon and chemist, I have been a teacher in the Albany Medical College ; have taught there three or four years, commencing about 1854 ; and in the Vermont Medical College two years ; since that time I have not been connected with any medi- 669

cal college ; in my professional practice I have had occasion to assist in post mortem examinations, probably between 50 and 100. In November, 1878, I was called to see Colonel Walton Dwight, by Mr. W. F. Winship, of Albany ; Mr. Winship was agent of the Union Mutual Life Insurance Company of  
 670 Maine, at Albany ; I was requested by him to go to Binghamton and see Colonel Walton Dwight ; I left Albany on the 6th of November and arrived at Binghamton on the morning of the 7th of November, 1878, I am not certain at what hour I arrived but I should think six or seven o'clock ; I first saw Mr. Dwight at his apartments at the Spaulding House ; before seeing him there I went to the Exchange Hotel and to Dr. George Burr's office ; I think I know who the physician of Mr. Dwight was ; I derived my knowledge of who the physician of Mr. Dwight was from Colonel Dwight himself ;  
 671 that physician was Dr. George Burr. I went and saw Dr. George Burr, and proceeded with him to see Mr. Dwight ; we found Mr. Dwight in his apartments at the Spaulding House, at 8:35 A. M. I talked with Colonel Dwight and Dr. Burr and examined Colonel Dwight.

I may state that the conversation that took place between Colonel Dwight, Dr. Burr and myself was fragmentary in its character and was not continuous, it was partly in the form of narrative and partly in the form of questions and answers ; after being introduced to Colonel Dwight he indicated that he knew the object of my coming to him and  
 672 stated that he was quite willing that I should make any examination in reason that I might choose to make, and also stated that he would give me an account of his illness, and stated that Dr. Burr would give details in regard to his sickness and the treatment that he, Colonel Dwight, had received from Dr. Burr. He then mentioned that his general health was usually very good ; that while in Chi-



cago in the spring he was attacked with pain and nausea; that he called upon a physician who treated him and that that physician saw him about four times—that being the expression he used; that he attributed his illness to change of water and climate, and that he shortly recovered; that commonly he was in very good health; that he did the mental and physical work which ordinarily half a dozen ought to do; that in the fall or in the last season he had been at Windsor, his former home, and that while there he had for several weeks been engaged in partridge shooting, rambling over the hills, and drinking surface water of brooks and sometimes of swamps, and often times it was none of the best; that after a time he felt unwell, and after a time he complained of pain and nausea and general discomfort; that he then went to Binghamton and consulted with Dr. Burr, who has since been in attendance upon him. He remarked that the principal symptoms which he had labored under were excessive nausea and pain in his abdomen—principally in the left side—and that this pain varied in intensity—sometimes the pain being nearly absent and at other times being very violent; that he was greatly troubled with sleeplessness and loss of appetite; that that morning he had not eaten anything but had vomited and he felt like vomiting again; that he had found that Malaga grapes, of which he had eaten some that morning, seemed to agree with him better than anything else; that during his illness, which had lasted, I think he said, from about the middle of October he had had several chills, one of which was very severe, and which were spoken of as congestive chills. He stated that during this attack he had felt cold; that he trembled; that his finger nails were blue; and that he felt very much depressed; that he thought that if he should have another such an attack in his weak and depressed condition he prob-

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ably would not survive—as I remember, that is about all he said.

I may state that when I entered the room Colonel Dwight was lying in his nightdress, I think, upon the bed, with his limbs extended. At times he would partially rise up lying upon his right side, his elbow resting upon a pillow and his head resting upon his hand. At other times during my examination, I asked him to sit up, and he rose in bed so that I might examine him more particularly. I may state that I noticed that his greeting when I entered the apartment was cordial, his manner was free and unembarrassed ; his voice was clear and strong, his tone loud ; his enunciation distinct ; he expressed himself with precision, clearness and force. I first examined him externally. I found his skin of natural moisture, no harshness ; his muscles firm, the extremities warm ; his countenance appeared natural—color in his cheeks and lips—; his eyes were somewhat reddened, the pupils reacted readily to light ; that is, when the eyes were suddenly opened and closed the pupils grew larger or smaller, his tongue was of natural moisture, generally covered with a light coating, except at the tip, where it was red. I noticed that the chest was of natural form ; that the heart was normal in the size, positions and sounds ; that his rythm—the beating of the heart—was perfect ; the pulsations were weak ; the circulation at the wrist was very feeble ; the lungs were found apparently normal in every respect ; the respiration was clear—it was full and unembarrassed ; the liver was normal in size, not extending below the ribs, and not having any irregular outlines or nodules upon it ; the spleen was but imperfectly examined, from the fact that Col. Dwight complained when pressure was made in that region in the left side of the abdomen below the ribs, and requested me to desist ; the abdomen was natural in form, not tympanitic, no collection of gases in there—not

bloated—of natural consistency and the pain of which he complained was upon the left side below the ribs and extending three or four inches below the border of the rib. I think that is all I can think of.

When I speak of the term “normal” as applied to the heart and the other organs, I mean by that “natural”; when I use the term “nodules,” I mean lumps. He didn’t speak very definitely about the subject of congestive chills; I spoke to him particularly about that and the answers were rather indefinite. I may say that the difficulty with me arises from the fact that at the same time we were talking together, or about the time Col. Dwight and I were talking together, Dr. Burr and myself were also having a conversation together, and I am not positive that I can separate distinctly or accurately. 679

Q. Did Mr. Dwight make any answer to you that you can state when you asked him the question as to the duration of the congestive chill? A. I couldn’t speak positive. 680

Q. When Mr. Dwight spoke to you about these congestive chills did he say anything about their not being accompanied with heat or sweating? A. I asked him about that. I asked him whether he had any fever at such times. He said no, and when I spoke about his sweating, he said he didn’t “know that he did sweat,” that was the expression he used.

Q. From your physical examination of Mr. Dwight himself at that time, did you find any evidence of disease in your physical examination of him? A. Yes; I found disease; I found what might possibly be an evidence, and might not; that was the feeble circulation. It was not a disease, but it might indicate—it might be a symptom of disease and it might not. 681

Q. Was anything said in the conversation, by either Mr. Dwight or Dr. Burr, as to his having

taken certain medicines, and if so, what were they?

682 A. There was The reference to the medicines was made in a general way by Col. Dwight and in a more particular way by Dr. Burr. Col. Dwight spoke of his taking quinine and its not agreeing with him. He also spoke of having taken morphine in order to quiet pain and produce sleep. He stated that it required a great deal more to affect him than it did ordinary people. I don't remember anything else he spoke of particularly,—he did speak of calomel. A part of the conversation between Mr. Dwight, Dr. Burr and myself was in the form of a narrative, and a part was in the form of questions and answers, and in the conversation Col. Dwight spoke of his having pain, and that he had to take morphine to quiet him:

Q. What did Mr. Dwight say to you referring you to Dr. Burr as to his treatment and symptoms?

683 A. Well, he stated he would give me an account of his symptoms, and that he would refer me to Dr. Burr for details of his sickness and his treatment.

Q. Next what did Dr. Burr say in regard to his taking these medicines? A. Dr. Burr stated that in the early part of his sickness he had given Col. Dwight calomel and opium; that he had given him morphine to quiet pain and to produce sleep, also bromide of potassium; that he had given him sulphate of quinine, and had afterwards dropped that it not seeming to agree with him, and more lately Fowler's solution that is solution of arsenite of potash, and to quiet his nerves, or to quiet him

684 had given him extract of gelseminum.

Q. Assuming, doctor, that Mr. Dwight had taken these drugs as Dr. Burr stated, would it be sufficient to account for his feeble pulse? A. That would depend upon the time they were given and the quantity given. I will modify that a little. From the time they were taken and the quantity given ordinarily the effect would be to diminish or weaken the circulation.

Q. Did you derive from Col. Dwight any information on that subject which leads your professional mind to a conclusion? A. I did in a general way. That information was, that usually, or frequently, the pain that he suffered from was severe, and that he required a larger quantity of morphine to quiet him than would ordinarily be the case; and also from the fact that he was greatly troubled with sleeplessness, and morphine was given for the purpose of producing sleep as well as to quiet the pain. 685

Q. Assuming that answer to be correct, would the taking of the morphine, as stated, be sufficient to account for the feeble circulation? A. I think it would. The only other point that at this moment I recall was in reference to the temperature and pulse during the course of Col. Dwight's illness. Making an inquiry in regard to those points Dr. Burr stated that his temperature was always about normal, and I think he used or I think he stated, although not in those words, but in similar terms, that his pulse was always about normal and natural. I remember nothing further that Dr. Burr said. I counted the number of pulsations per minute; the number was 74; that is about healthy; I also counted the number of respirations, they were twenty; I should say that that was higher than natural, but not unhealthy. 686

Q. You spoke of a light coating on a portion of the tongue; was it such as to indicate any serious disease? A. I don't think I did speak of a light coating; I think I spoke of a white coating; I should state that it was a light, not thick, white coating; it was of no significance; I can't say that Dr. Burr said that he had been giving him Fowler's solution of arsenic in reply to any question of mine; I made no inquiry as to the examination of the urine; I am now confining myself to the interview with Dwight. 687



*Cross-examined by Mr. Smith :*

When I went to Col. Dwight's sick bed on the occasion I have mentioned, I went there an entire stranger to Col. Dwight, and so far as he was concerned, unasked and uninvited, I think ; directly  
 688 I know of but one person who was connected with the procuring of me to go there ; indirectly I should name another ; the first one I should name as directly asking me to go there was Mr. W. F. Winship, the agent of the Union Mutual at Albany ; and indirectly there was Mr. John E. De Witt, the President of the Union Mutual Company ; I know of no others.

Q. During the time you were making that examination and ever since, down to this minute, have you been acting with the understanding that you were in their employ, and to be compensated by their company for making this examination, for  
 689 attending this trial, and for giving your testimony ?  
 A. Partly yes and partly no ; I will state that up to the time the examination was made, and probably a week or so afterward, I did expect that I was to be compensated for my examination, and at that time I was paid ; subsequent to that time I considered it by no means certain that I would be called upon to testify in this case ; but lest there should be any mistake I certainly did expect that, if I did come and testify, I should be compensated for it.

Q. Have you been acting with the understanding  
 690 in your mind, that you were in the service and employ in this matter of this insurance company ?  
 A. I have not been acting in any way since the week transpired after the examination.

Q. After you had made the examination at Binghamton, which you have been speaking of here, did you write out a full detailed report of what occurred and came to your knowledge during that examination ? A. I did write out on the 8th of

November a somewhat detailed account of my interview with Dwight at that time, and also of the substance ; I think that answers the question ; I did write it out ; I handed it to Mr. W. F. Winship at Albany ; I have seen what purported to be that in a printed book of minutes and read it ; I looked over it at the time it was first handed me ; exactly 691 when that was I don't know, but I think it was in the spring of 1879, if I recollect aright ; and from that time until within a day or two I don't think the book has been opened ; within the day or two I have looked over it—the last time this morning ; I found it, as there printed, accurate, so far as I remember, substantially so ; that printed testimony which I examined is at my rooms where I lodge, in this town ; I can't say when it was furnished to me, but I think in the spring of 1879 ; I am not positive whether I received it from Mr. Winship or some one else ; the fact is just this, that, understanding that such a report was published, or such 692 a statement was published, I was anxious to see it, and I informed Mr. Winship of the fact, and whether he handed me the matter, or whether it was sent to me through the mail, I am unable to say ; Mr. Daniel Magone, of Ogdensburg, and Mr. Brosnan, of New-York, had a personal interview with me in reference to my visit to Dwight on the occasion referred to ; I had two interviews with Mr. Magone, at one of which Mr. Brosnan was present.

Q. Had you had any interviews with anybody not already named, prior to your visit to Dwight ? 693

A. I have spoken to a number, but aside from that I don't remember any others ; possibly Mr. Winship may have spoken to me about it ; I don't remember of any others at this moment.

Q. Did you, at that time, understand Mr. Magone was one of the counsel for some of these insurance companies ? A. I have the general understanding, but I don't know how I obtained it ; I understood

that Mr. Brosnan was one of the organization to defend.

Q. And did you have interviews with these gentlemen upon the subject, to which you directed your attention, and to which you were to collect information referring to the period preceding your  
 694 going to see Dwight? A. I had no interview in which I was requested to direct my attention to or collect information; I am not aware that the interview related to the subject of my expedition to Binghamton to see Dwight; I do not recollect that it did at all.

Q. Did it relate in any wise to your employment in any capacity in any department of the service to be performed on the defence of this case? A. It did not relate to any capacity; it did not relate to the subject of life insurance. It did relate to Dwight. I don't think allusion was made to the  
 695 pending suits; I don't think it related to the Dwight insurance; it may, I am not positive of it. I mean I have no recollection that the subject of that insurance was spoken of by Dwight or any one else.

Q. Are you able to state how long before your going to Binghamton this interview took place? A. I am entirely under a misapprehension. These interviews with Magone, which I have spoken of, took place subsequent to my going to Binghamton and not previously.

Q. Prior to your going to Binghamton, did you have any interview with anyone connected with any  
 696 of these matters except the persons you have named, Winship and DeWitt? A. I had no interview with either of them prior to going to Binghamton; I had no interview with any one.

Q. Did you, prior to going to Binghamton, to make the examination which you have mentioned, have any communication with any human being upon the subject of your going there? A. I did, with Mr. W. F. Winship; I had no interview with him,

but I had a communication ; I also had a communication, I think, possibly with a clerk in the office of Mr. Winship, at Albany ; he may have handed me a letter and spoken to me, but I have no very precise idea about it ; he may have handed me a letter stating that Mr. DeWitt had written it, but I am uncertain about it. I think the first communication from Mr. Winship was made on or about the 4th day of November, 1878 ; it was at Dr. Swinburne's office and in the presence of the doctor when the first interview I had with Mr. Magone, and then the second interview with Mr. Magone and Mr. Brosnan took place. Dr. Swinburne was present at both interviews. 697

Q. Now the other? A. I think the first interview with Mr. Magone was about two years ago, and the second interview with Mr. Magone and Mr. Brosnan was early this spring ; neither of them related to my being a witness in the case ; they did relate to this case. There was no communication that I was to appear as a witness and no intimation of the kind whatever. Lest there is a possible misunderstanding in regard to these matters, I may state that I received a letter from Mr. Magone shortly after. When I went to Dwight's Dr. Burr went with me ; Dwight was told who I was ; I do not know who told him, but I judge Dr. Burr did. 698

Q. Was the nature of your business there stated to Dwight before this dialogue began? A. I should judge so from the remark ; I didn't hear him say anything about it ; when I was introduced to Col. Dwight there was no allusion made in the introduction as to the purpose for which we had come to see him. 699

Q. Was there anything stated by anybody as to the nature of your business there with him then? A. There was ; Col. Dwight stated it ; no one else had before he made the statement stated to him what my business was to my knowledge. Col.

Dwight stated in about as many words, after, I think, he had bid me good morning and shaken hands with me, he stated that he knew the purpose for which I had come; he said just that, nothing more that I remember of. I don't think he told me that he understood that I was there at the instance of the insurance companies. His wife was not present. I don't remember seeing his child. Nobody else was there but Burr at that interview. I don't know that there had been any measures taken to clear the room or withdraw the nurse or attendants so that we would be undisturbed in our interview. We two gentlemen were there alone with him. I am not certain how long after he made the statement to me that he knew what my business was there. I did not proceed to ply him with questions put to him relating to his physical condition then and there. I think, as I stated before, there was a running conversation, partly in the form of narrative, and partly, when I could get a chance, in the form of questions and answers; I put a good many questions to him; I don't think I put every one that I could devise that I thought would shed light on his physical condition; I cannot state now particularly what branch of the case I left unexhausted.

Q. Can you think of anything that came into your head that you could ask him that you did not ask him? A. I do. I couldn't say how long my examination continued. The oral branch continued throughout the whole interview. I could not state with any accuracy about how long this period was over which this dialogue continued, I should guess about an hour. Both Dr. Burr and myself were present, but no one else to my remembrance. I think something was administered during that time—one Malaga grape. I don't think anyone prescribed it; I think Dr. Burr handed him the dish that contained them; I don't remember that anything else was administered during that time.



I made a careful personal examination of his body, and these results which I have given I should say were only the results, so far as his physical condition is concerned, that were obtained by an external examination.

Q. Now be good enough to tell me with great minutia, just what examination you made as to the spleen? A. The examination of the spleen was exceedingly imperfect, as I have already stated, and it was made by an attempt on my part to auscultate, which is a sounding upon the abdomen and pressing with the finger to ascertain whether the spleen was enlarged, and also placing my hand upon the abdomen and pressing it upward, or a portion of it, in order to see by that means whether the spleen was enlarged. 703

Q. So far as you know has anybody to this day discovered the office that the spleen performs in the human organization? A. I could not say as to that? 704

Q. So far as you know, does the size and weight of this organ vary in a very marked degree in different human beings? A. I have no doubt that it does considerable.

Q. Can you speak from knowledge, and state whether there is any known means of discovering before death, and without a personal examination of the liver itself, with any degree of certainty, whether there are lumps in the liver or not? A. No, sir; not positively.

Q. Is there any means, so far as you know, or any skill, or science by percussion or in any other way, of determining with any degree of certainty by the examination of a live subject whether there are lumps in the liver of a living subject? A. I should say yes and no; when the lumps are on certain portions of the liver I should say no; if the lumps were on certain other portions of the liver, I should say yes. 705

Q. Now with reference to Col. Dwight, you speak

of the condition of his pulse and the beatings of his heart ; the number of pulsations of the heart you ascertain by counting ? A. Yes, sir ; by holding the hand on some part of the body where it can be felt and then counting it ; the pulsations at the wrist indicate the pulsations of the heart ; they are  
 706 ascertained by holding the hand on the wrist and counting—that is one way ; another way is, by placing the hand on some other portion of the body ; when you want to get the pulsation of the wrist you put your hand on the wrist.

Q. Did you do it in this case ? A. Yes, sir ; on both wrists ; the normal pulse I should say is about 70 ; I should say that there is a variation in different patients of possibly ten degrees ; it may be, but is not necessarily, nor do I think necessarily affected very much by the general condition of the health ; I think it would depend very much upon the particular part disturbed or the disease ; the character  
 707 of the pulsation would depend in some degree upon the condition of health of a man's body.

Q. May it be decreased or diminished by the nourishment of the body, whether well or illy nourished ? A. I should say to a limited extent ; I should state that if the nutrition of the body was very small so that a person had become emaciated, I should think that the pulse might be considerably affected numerically ; I think it might be affected both ways ; it would depend upon the condition and the particular patient I think ; the condition of this pulsation is numerically affected by the  
 708 position of the person being lying down or being erect, and sometimes I think it would be considerably.

Q. And sometimes although there is the absence of the nutrition, when there is some irritation like an acute fever even with the absence of nutrition, even under the irritation of an acute fever, wouldn't there be a acceleration of the pulse ? A. If a person had a fever he would have a higher pulse.

Q. So the beating operation of the pulse is not a very important element in ascertaining the actual physical condition of the man, excepting so far as it is connected with other circumstances growing out of his condition? A. Yes, sir; I think it would be important; if for example I should find a very irregular pulse or a very rapid pulse—a very rapid pulse we will say—and the person appeared well, I should be suspicious. 709

Q. Wouldn't you expect to find a rapid pulse in the case of a person on the near approach of death?

A. No, sir; it would depend upon circumstances.

Q. The inference to be drawn from the condition of the pulse depends very much upon the condition of the patient in other respects. Standing alone it is not much of a test? A. No, sir, hardly so; it is a test to some extent.

Q. Can you tell now of any diseases that would be indicated with any degree of certainty by the condition of the pulse? A. Yes, sir. 710

Q. Can you tell any condition of the body that would be indicated by the condition of the pulse? A. Yes, sir.

Q. How much below the normal or natural condition do you say you found Col. Dwight's pulse? A. I didn't find it any way below the natural or normal condition, it was 74—I do not think there was any significance in the number; the number of the pulse was about natural.

Q. Does the administration or the taking of an anodyne have the effect to reduce the pulsation?

A. That depends upon what anodyne is taken. 711

Q. Does any anodyne which operates to produce rest and absence of irritation and possibly sleep, is its result to reduce the pulsation? A. It certainly does reduce the pulsation.

Q. And are some of these remedies which are used as an anodyne found to have almost the opposite effect in some patients? A. I should think that is very possible.

Q. Isn't it quite possible and quite common, as for instance, sometimes morphine given as an anodyne to operate as a stimulant in some subjects?

A. Well, it would depend, as I have stated long ago, upon the time and quantity, the time of doses and the quantity taken.

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Q. Don't it sometimes operate as a stimulant?

A. It does when taken in minute doses.

Q. Did you discuss the effect of these remedies with any one while you were there in that interview, or otherwise with Dr. Burr? A. I did not in that interview, but did subsequently; I have had several interviews with Dr. Burr, I had one that day prior to going to the house, and one at the house and one subsequently.

Q. Did you discuss with Dr. Burr at that interview, or with him at any time the subject of the remedies that had been employed? A. I did in a

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general way.

Q. Was that after your interview with Dwight?

A. It was certainly largely after; possibly some before. I remember of no discussion taking place during the interview at Dwight's bedside on the topic of the absence of nourishment.

Q. During the course of that discussion was there any interview upon the subject of the prolonged period during which he had been without food?

A. I remember of none.

Q. Or of the condition or appearance of the stomach as indicated by the color of the substance that was ejected from it through his mouth? A. I

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remember of no allusion whatever as to the appearance of the stomach.

Q. As a medical gentleman, do you understand it as an important element in determining a man's physical condition as to the manner and character of the performance of the stomach? A. I do.

Q. You have spoken of chills, congestion and the feeling of cold, and the color of the finger nails; did you make any particular examination with a

view of ascertaining the condition of the patient on that subject? A. I did.

Q. Is it a fact that most of the diseases affecting the condition of the blood, affects the circulation? A. Well, I hardly know what is meant by that.

Q. Was there any more minute description of the chills that he felt, than you have already described? 715  
A. I think none.

Q. Was there anything said as to how long anterior to that they had first begun to appear? A. No; I inquired about that after the statement he made regarding the number of little chills or slight chills, I think it was spoken of as what he had had, and when they occurred, and the answer was indefinite, no particular time was given, I am not able to say what he said in reply.

Q. Are you able to speak with any degree of certainty and tell how early a period he said they commenced? A. No, sir, I am not; the only date 716  
I obtained was in regard to what was called a congestive chill.

Q. A chill or sensation of unnatural chilliness is not an uncommon symptom? A. It is not, especially for the last few days.

Q. Well, this sensation of chilliness is the result of a disturbed circulation of the blood from some cause or another? A. I think that is an important element in it.

Q. The way we get the sensation of cold and heat is from the condition of the blood? A. No, sir, it may or may not be.

Q. And a congestive chill, in the broad sense of 717  
the term, giving the words their ordinary meaning, is a chilliness produced by an unnatural circulation of the blood, isn't it? A. I would hardly say that was produced by it.

Q. You have spoken of his depressed condition; did you get that from your diagnosis or from what he said? A. He used the terms himself; I did not get it in any other wise. I stated the



tongue was covered with a thin, white coating, except at its tip it was red, I think not an uncommon condition of the tongue. There was nothing so marked about the color of the tongue as to enable me to draw any inferences as to the other conditions of the body; the redness of the eyes, taken alone, was not to any such degree abnormal as to be indicative of any condition of the body. I came here to Norwich on Monday morning last, a week ago, and have been here ever since.

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Q. Have you been, during the time you have been here, in consultation with others in regard to the facts of the case? A. I have.

Q. Did you understand that these interviews and the consultations were with the view of preparing different gentlemen's testimony to be given upon this trial—I want to know whether that was the understanding in your mind? A. To prepare persons—well in a certain sense I should say yes; I can hardly tell the names of these gentlemen: Dr. Austin Flint, Junior, was present, also Dr. Horatio C. Wood, Dr. B. F. Sherman and Dr. Bridges, whose initials I have now forgotten; I think four other gentlemen, physicians, living in this town or vicinity, and I cannot at this moment speak positively as to the names of either of them. I think one was Dr. Mosier, of this place, as I remember; I can't remember the others.

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Q. Interviews been going on the entire week upon this subject? A. No, sir, not with me.

Q. You put in a qualification which I didn't put in? A. It is likely I did.

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Q. To your knowledge, the question is? A. No, sir. I never saw Dwight after this visit which I have described; I was not present at either of the autopsies on his body.

Q. Have you now stated the extent to which you have been acting for anybody in connection with the examination of Col. Dwight or his mortal remains? A. I have.

Q. Or of any fact, matter or commodity understood to be in anywise connected with Col. Dwight?

A. Yes, I have.

Q. Did Dr. Burr exhibit to you any paper that was spoken of as relating in any wise to Col. Dwight? A. He did.

Q. And did you examine it? A. I did.

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Q. Did you make yourself conversant with the statements in it so as to be able to ascertain whether so far as there was any indication in the appearance of Dwight's body or otherwise, there were any inaccuracies in the statement? A. I cannot say as to that.

Q. Are you able to state that you looked that paper over and made yourself familiar with its contents before you went to the sick bed of Dwight, as you have described? A. I did not.

Q. Had you looked it over before? A. I don't think I looked it over before.

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Q. Did you copy it or procure a copy? A. I did copy it.

Q. Then? A. No, sir.

Q. When? A. On my arrival at Albany.

Q. Did you take the original with you then? A. No, sir; I think that Dr. Burr gave me a copy.

Q. And you copied from his copy? A. I copied from his copy; that is my impression.

Q. Was the paper that you made attached to the report that you made to the Union Mutual, which you have spoken of already? A. Yes, sir; it was.

Q. Did you reach a conclusion from the examination which you made as to Col. Dwight? A. No positive conclusion.

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Q. Did you report a conclusion? A. No positive conclusion. I reported a number of conclusions; I have changed some of them since, I can hardly define the time when I changed my opinion, it has been more in the way of a gradual growth or gradual arriving at an opinion rather than at any spe-

cific time, as the matter has been occasionally thought of by me.

Q. When did this "gradual growth" and this "thinking" by you, come to that degree which in your understanding amounted to a change of opinion? A. It didn't amount to a change of opinion; I hadn't arrived at any decided conviction before.

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Q. When did that state of things come to pass which led to any conclusion, opinion, inference or suspicion different to that which you have reported? A. Well, I couldn't say certainly; I should say probably within two or three years.

Q. Are you able to speak from memory and state with any degree of certainty the conclusions which you reported at that time? A. I think that I am.

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Q. Or have you any written memorandum, or is there any written memorandum which you can use, which will enable you to speak with more certainty as to the actual words used? A. No, sir: none that I know of; it is possible that in a collection of written papers which I have in my possession it may contain some memorandums; I have not looked at them for four years.

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Q. You saw a printed document? A. Yes, down to as late a period as this morning; and that was accurate—I think so certainly; I couldn't repeat it; I remember it was that which I wrote at the time, I think it was an accurate statement of what I wrote the next day after my visit to Dwight; and it is what I wrote to those who employed me to make the investigation; and what I intended to be and believed at the time was the truth.

Q. Did you, on the next day after you had made this examination of Mr. Dwight, and in reference to that examination, and in reference to Dwight and his condition, communicate to the persons that you have said employed you to go there, in words or substance, as follows: Conclusions.—My opinion, based upon the information obtained as above may be expressed as follows: *First*, It appears to

me most probable, considering Mr. Dwight's previous attack in Chicago and exposure during his hunting at Windsor, that this present illness is of malarious origin. *Second*, that even supposing such to have been its origin, the symptoms do not wholly negative the theory that some irritant poison may have been taken at times. *Third*, that if such irritant had been taken, a chemical examination of the urine might detect it. Of course arsenic having been administered medicinally its discovery in the urine would be a matter of course. *Fourth*, that the symptoms as reported cannot, in my opinion, be accounted for on the theory of chronic poisoning. *Fifth*, that there is a strong probability of the recovery of the patient—now answer the question. A. I did. 727

Q. In this statement as I have read it, is contained the clause “upon the information obtained as above”—does that refer to the information obtained in the manner and to the extent to which you have described here in your testimony? A. It does not wholly, that was a part of it. 728

Q. On the subject, was there above that report, when you made it, anything except that to which you have here given testimony? A. There was no subject—there was no matter above the report excepting as stated.

Q. You say, “my opinion based upon the information obtained as above”—what I want to know is whether in that expression “obtained as above” there was anything which referred to any other matter or thing than that covered by your testimony here? A. Yes, sir; it did cover other matter and things. 729

Q. The question is whether that expression upon which these conclusions are based of “information obtained as above”—whether that embraces any other matter than that of which testimony has been given by you here? A. It does embrace other matter.

Q. What other subject? A. It does not embrace any other subject.

Q. To what other thing does the matter refer other than in your statement? A. No other thing or circumstance I think I may say.

730 Q. (Book handed to witness.) I would thank you if you would look at pages 5 and 6 in that little book I now hand you; are you able to say whether that is a correct statement of your examination or not? A. I think it is so far as I know; I haven't read that this morning.

*Re-direct-examination by Mr. Russell:*

Q. You have been interrogated as to the rapidity of the circulation in connection with the condition of the health of the body; is it not a fact, as usually discovered, that where the patient is feeble,  
731 his circulation becomes more rapid? A. That I think is usually the case.

Q. You have been interrogated as to whether you received any information from Dr. Burr, prior to going with him to Dwight's; is it a fact that when you and Dr. Burr arrived at the house where Mr. Dwight was staying, he went in alone to Dwight's room and had an interview with him prior to your coming in? A. He did.

Q. You were asked if you could think of anything you might have asked at that time that you did not ask, and you answered that you did not; to what did you refer? A. There were a great  
732 many things I might have asked in regard to his sickness that I did not ask, was the reply I made.

Q. Had you in mind at the time you answered this question of the counsel, any particular thing that you might have asked that you did not ask then? A. I don't remember at this moment what I was thinking of.

Q. Are those questions which you might have asked, as you now think, but which were not then



asked, suggested by the subsequent events, such as the autopsy and the second post mortem examination? And when you answered counsel by stating that matters upon which you were somewhat of doubt at the time you made the report, had subsequently settled into conviction; did you refer to the intelligence that you had received from the autopsy and the second post mortem examination? 733

A. It is based partially upon the report of the autopsy and the coroner's inquest, and further knowledge on my part of matters connected with the sickness and death of Col. Dwight.

Q. You have been asked as to the character of the report which you made when you returned to Albany in connection with some subsequent change or difference of opinion; I interrogate you as to the same matters in the report which was read to you by Mr. Smith; were the conclusions thus derived, which you reported to the company, based largely upon the mere statements that Mr. Dwight made to you as to his past condition and feelings? 734

A. They were.

Q. The first branch of the report that was read to you by Mr. Smith was this: "As it appears to me most probable, considering Mr. Dwight's previous attack in Chicago and his exposure during his hunting at Windsor that his present illness is of malarious origin," do you believe that statement now to be correct? A. I am rather inclined to think that it may have been of malarious origin. Now understand me, I say the *origin* of it; I don't say the subsequent course of it, and I did not in that statement, but as regards the origin of it I am inclined to think it may have been of malarious origin, calling by that name the means by which the exposure, as indicated by Mr. Dwight, and the drinking of surface water and lying upon the ground, that they may have influenced his nausea and general disturbance. 735

Q. With this presumption, or assumption, rather,

that those statements that he made to you were true? A. Yes, sir, I am rather inclined to think so now.

Q. You speak in your third conclusion that if such irritant had been taken, a chemical examination of the urine might detect it, and of course  
736 arsenic having been administered medicinally, its discovery in the urine would be a matter of course—did you have any opportunity to examine the urine at the time you were there? A. I didn't examine any; I have no doubt I could have had the opportunity; there was no inquiry made about it at that time, none whatever.

Q. You report finally that there is a strong probability of the recovery of the patient—did you in that or any other examination, or in anything that was said to you by Dwight or Dr. Burr, see any reason for any other expectation than of the probable recovery of the patient? A. I saw nothing  
737 which induced me to believe that he was seriously ill; I saw nothing whatever.

Q. And do you now, in reviewing the case see anything in what you saw then and what was then said to you, to change that opinion? A. Yes, sir.

Q. What was it? A. If the statements made by Col. Dwight were true, that he had had a violent disturbance of the system, which was called a congestive chill—if such a thing should occur, if such a thing was true, why I should think that would represent a dangerous condition, but I saw nothing in his condition which at all indicated his having  
738 had a congestive chill or chills. Col. Dwight was a large man; his height was six feet two; his weight was about 220 pounds, though he expressed the opinion that he had lost somewhat, and mentioned 15 or 20 pounds as being the amount he had lost. He was a large man, rather fleshy; decidedly muscular, broad shouldered, his body was very well nourished; his pulse was perfectly regu-

lar and even,—there was no variation in it that I noticed.

*Re-cross-examination by Mr. Smith :*

Q. Would ordinarily the entrance of a stranger into the room of a sick man affect the condition of his pulse? A. I am inclined to think that ordinarily it would. 739

Q. Quicken it, wouldn't it? A. Rather so.

Q. Well, you failed to discover, as it seems now upon reflection, and thinking it all over, anything that impressed you with the idea that he was sick, is that right? A. No, sir; I saw nothing that impressed me then or now that he was seriously sick.

Q. Was there anything in the condition of Col. Dwight at that time that indicated a serious sickness? A. There was nothing that I know of.

Q. Would the condition of a stomach that would not perform its functions, so far as retaining any nourishment that was taken into it, indicate a serious physical derangement? A. That would depend upon what drugs he was taking; it would also depend upon a variety of circumstances. 740

Q. The case I put to you is the case of a man who indicates the sole symptom of having a stomach which will not retain anything? A. I don't think necessarily that that would indicate any serious disease.

Q. No serious sickness? A. No.

Q. Unless the man is relieved of that he would die? A. Yes, go right straight down to the grave. 741

Q. Do you say that that does not indicate a derangement? A. I didn't say that. I say it does not indicate any serious disease; a man may have serious disease with or without it.

Q. Don't the derangement of the human system in any respect, so that it fails to perform its natural

functions, rise to the dignity of a disease? A. Well, it might or might not.

Q. Can you conceive of any derangement of any part of the human system that amounts to an interference of its performing its natural functions that does not amount to a disease? A. I can. I  
 742 might tie a cord around my wrist, interfering with the circulation as long as it was on ; interfering seriously with the circulation around my arm, that wouldn't constitute a disease.

Q. I don't mean from assassination, or cutting a man's head off, or hanging him, but I mean from any interior cause? A. Yes, a man might swallow some solid object to interfere with digestion, and while the object was there it would nauseate him, but it don't constitute a disease.

Q. Can you conceive of any condition of the body from any abnormal condition, and not from violence of an outside act, but would interfere with  
 743 its performing its functions, that would be a disease? A. Yes, I can ; want of sleep might derange his circulation ; that is not necessarily a disease.

Q. If a man can't sleep isn't that a disease? A. It depends upon what causes it. I say that something new has come to my mind, something that was not covered by that information in reference to the condition of Col. Dwight, that has affected my judgment ; that has come to my mind from a variety of sources ; that volume is one ; I don't know the title of it ; it contains my letter to the  
 744 insurance company, and a statement of the *post mortem* examination, and of the coroner's inquest in the case of Col. Dwight ; two autopsies of this body were made ; the first was made, I think, about 48 hours after his death, and his body was dug up, I think, some five months afterwards ; I embrace both those examinations with the other matters I spoke of in my change of opinion ; the other matters are books, a variety of books regard-



ing general practice—the practice of medicine, medical jurisprudence, that I have been studying up since ; not studying them up at the instance of these defendants, but for the purpose of acquiring knowledge generally ; I had the Dwight case in mind ; I do not think of any other facts, circumstances, incidents or other indications whatever, 745 bearing upon my mind in this change of opinion than those I have already mentioned. I am not positive whether, in a letter written by Dr. Burr to me after my visit to Col. Dwight, there was not some allusion made to his condition that day, I don't remember of any. Something has come to my knowledge in relation to congestive chills since I was there ; there is a disease of the human system known by the term “congestive chills.” I do not think that using the common meaning of the term, “congestive chill,” you would include every unnatural chilliness of the body which is caused by congestion, or by unnatural circulation of the 746 blood ; whether I can tell when I see a patient whether he has a congestive chill or not depends entirely upon how I would use the term. I hardly know what a chill is ; it means cold ; it don't imply cold however ; it is a sensation of cold, but the fact may not exist ; as applied to the human system it is a sensation of chilliness. The word “congestion” applied to the human system does not mean an unnatural circulation of blood ; it implies rather the condition ; it don't imply, as I understand it, an unnatural circulation ; it may have been caused by an unnatural circulation ; the blood may be perfectly natural ; I have heard the word 747 “congestion,” as applied to a condition of the human system ; I hardly know what it means ; I know what condition it sometimes expresses. I don't have much idea of what malaria is ; I don't know what it is ; the word “malaria” does not convey the idea of the condition of the atmosphere tainted and obnoxious, or in a greater or less de-



gree poisonous by impurities from the decay of vegetable matter, or the evaporation of impure fluids; there is nothing that I know to be malaria; there is not to my knowledge a disease known as malaria; there is a word "malaria" that I recognize; I don't know what it is in itself. When I  
 748 used the term in this report "probably of malarious origin," I had no reference to the atmospheric condition in which Dwight had been; I did, to a certain extent, have reference to an exposure of his body, to which he had been in a greater or less degree subjected; I could not state what that particular kind of exposure was to which I had reference when I said "malarious origin"; I could state what his exposure was; his lying on the ground was one of the forms of exposure; his lying right on the bare earth was an element of his sickness; it was not an element of the "malarious origin," to which  
 749 I referred; I have not heard of his bathing—at least he didn't tell me of it; that is not what I had in my mind when I used the term "malarious origin."

Q. Or did you have in your mind the fact that when he had gone hunting, he knowingly and deliberately drank the water right out of a spring; did you have that in your mind? A. That was an element of the condition that prevailed; I did not have that in my mind particularly when I used the term "malarious origin;" I did not have "Chicago speculation" in my mind; I don't remember to have said anything to Dwight about malaria; I am not  
 750 certain whether I did say anything to Dr. Burr about it or not; I did not say anything to anybody in that interview, together with Dwight and Burr, as to the condition of Dwight's urine, or as to whether there had been an examination of this substance; I did not say anything to anybody, or do anything towards procuring any sample of this commodity while I was there, on this ante-mortem examination.

Q. I now put to you the question put to you on re-direct-examination, "In answer to counsel that the matters upon which you were in somewhat of doubt, at the time you made the report, have now settled into a conviction. Do you refer to the intelligence you have received from the autopsy and the second post-mortem examination?" Now, 751 when you made this report, were you in doubt, or did you intend that as an honest, truthful, manly, and just report? A. I intended it honestly; I have not changed it; I intended it as an honest opinion. In answering that question I refer to both the first and second autopsies; I was not present at either; I got my information from three or four sources; first from the books; second and third and fourth, from Doctors Swinburne, Sherman and Bridges. I am able to state a fact or circumstance to which that information relates; I got it from Dr. Swinburne; I have seen him frequently; he has not been indicating to me or assuming to indicate to me, facts, 752 or assuming that they were facts bearing on the opinion I had formed. The opinion which I have now depends in some degree upon facts that I have obtained or believe I obtained from that source.

Q. Will you be good enough to name, not the particulars, but to name so as to identify it, any transaction, fact or circumstance which came to your mind in that way? A. In regard to certain of the internal organs, the heart. Doctor Burr, whom I saw there at Binghamton, was an old acquaintance of mine; I had known him about eight or ten years; I have met him there; I should say he was about sixty-five or sixty; I understood he had been a practising physician at Binghamton during the time of my acquaintance with him. 753

Q. Was he President of the State Medical Society?

Objected to as incompetent and immaterial; the Court overruled the objection,

to which ruling the counsel for the defendants duly excepted.

A. Not to my knowledge ; prior to that time and for several years he had been a professor in a medical college in this State, as I understand.

754 Q. Where? A. At Geneva.

To Mr. Russell.—The disease known as congestive chill, or more commonly called pernicious fever, sometimes called pernicious intermittent fever, is a disease which prevails usually in highly malarious districts and especially in the South and West. It is characterized, first, by a stage of development which may consist only of a general feeling of lassitude and oppression, accompanied with pains in the limbs and back, and oftentimes with pains in the head. This continues for three or four days, when usually there is a slight chill. In cases which do not terminate fatally, this chill  
755 lasts for a variable period, how long I cannot possibly state, but I should judge from one to two or three hours; then it is followed by fever, and usually by sweating; the patient, after this paroxysm, will in a few days gradually improve and be able to be about. Commonly the second paroxysm occurs in from one or two days from the first; this is more violent; there is commonly a great sensation of cold and chilliness; the respiration becomes impeded, oftentimes the limbs seem to shrink, the flesh feels dead. After this is passed there is an increase in the apparent temperature; the  
756 respiration, which has been bad at first, becomes even more so; sometimes there is great disturbance of the bowels during the second paroxysm—the patient passing at intervals of may be twenty or thirty minutes a watery discharge usually tinged with blood; the patient gradually sinks; the anxious expression which has been manifest during the second paroxysm becomes greater, and finally the patient may die. Sometimes, instead of dying in the

second paroxysm or in the first, he does not do so until the third. The circulation is usually very rapid and the pulse small and feeble. Other forms of the disease are characterized by the impression, or the striking impression being made upon the brain or upon the lungs. In the first case the patient may lie in an insensible condition, or he may become delirious. In the second case where the effect is largely upon the lungs the striking manifestation is the exceedingly difficult respiration ; that in the general way is the idea of it. 757

I think that that is decidedly distinguishable from the fever known in these latitudes as intermittent fever. A post mortem examination is made to ascertain the condition of the various organs and parts ; it often affords additional information upon that subject.

*To Mr. Smith.*—I took this definition of a congestive chill partially from a book—from no particular book ; from Flint's Practice of Medicine, Ziemssem's Practice of Medicine, Attkin's Practice of Medicine, Tanner's Practice of Medicine, Wood's Practice of Medicine, Hartshorn's Essentials of the Practice of Medicine, and from certain articles in the American Journal of Medical Science for the year 1843 and the year 1844, written by Drs. Perry and Wharton. Those are the chief books I now remember to have looked at ; I cannot recall any others at this moment. I did not derive my knowledge of a congestive chill exclusively from books ; I have lately been studying up these various authors upon this subject. An actual case of congestive chill has not fallen under my observation within the last twenty years so that I can name the person who was suffering from it. I cannot give the name and circumstance of more than three cases that have ever fallen under my observation during my lifetime ; my knowledge mainly, as to what is or is not within the technical medical sense of the term a congestive chill, depends mainly upon 758 759

the books ; I do not remember when I first entered particularly upon the subject or symptoms of congestive chills as a study and specialty ; I began to study the history or definition of congestive chills so as to be especially prepared on that subject when  
 760 in the army, about the year 1864 ; it was at the hospital of the Fifth Corps on the lines in front of Petersburg.

Q. *Mr. Russell.*—Then as I understand you, in your practice, both in the South while you were a surgeon in the army and also North in all your practice, these cases of congestive chills you have found to be extremely rare ? A. They have been exceedingly rare ; I never saw a single instance of one in the State of New-York ; I have seen within my professional experience thousands of cases of disease I can say. The books I have referred to on my  
 761 say, recognized as good as any authorities in the medical profession.

To *Mr. Smith.*—The case I alluded to in 1864 at the South is possibly the only case of congestive chills within the definition I have given where I can specify names which has come under my observation in twenty years.

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JOHN SWINBURNE, called as a witness on behalf  
 762 of the defendant, and sworn, testified as follows :

*Examined by Mr. Russell :*

I reside in Albany. I went there first in 1843, and with the exception of about eight years or perhaps a little more (perhaps ten years all told), that had been my constant home. I am a physician and surgeon ; I have been a physician and surgeon since I graduated in the spring of 1847 ; have practiced



ever since, with the exception of an occasional hiatus.

Q. What opportunity have you had for the teaching and practice of medicine and surgery—you may give them fully, if you please? A. I dissected mainly; I was engaged in dissection for many years and in teaching anatomy, both in College and my own private rooms, at Albany, until about 1860 or 1861, or that neighborhood, and then I was in the army until 1864 as Medical Superintendent of the New-York State Wounded. I was first appointed by Gov. Morgan, and afterwards by Gov. Seymour; I was there until 1864, and then I was appointed Health Officer of the Port of New-York. From that time until 1870, a period of six years, I was Health Officer and member of the Board of Health of New-York City. In 1870 I went abroad and was gone two years, and during that time I was Surgeon in Chief of the American Ambulance Corps during the Franco-Prussian war. From that time until my return in 1871 I was engaged in Albany in general practice, surgery, medical jurisprudence, &c. From 1877 to the present time I have been engaged in running a dispensary, where I have treated probably 50,000 poor people—run mainly for surgical purposes—for the purpose of demonstrating certain principles in surgery, I mean to get rid of the “tradition” in surgery. I mean by that to say, that where you have not established actual facts, the principles that govern the treatment would be regarded as tradition. I was a Professor for a while in the Albany College. I have been called, as an expert witness, on medico-legal subjects, and examined them, during my career. In this dispensary that I have at Albany, I have treated all forms of disease at my own expense; I have had no help from any direction.

Q. During the past year, have you served in any other capacity, or done any business, except the

practice of medicine and surgery? A. That has been my principal business. I have been Mayor of Albany for a few months, after a long fight, and am now. I was at one time called from Albany to go to Binghamton. Professor Porter came to me and requested me to go to Binghamton to attend a post-mortem examination of a person that was deceased at that point, giving me the name of the person as Walton Dwight. He, as I understand, was the physician of the company (some eastern company), and requested me to go in his place. I went to Binghamton. I think it was the 18th day of November, 1878. I went to Binghamton, to the office of the Doctors Burr; from there I went to see Doctor Delafield, and from that point I went to the Spaulding House. I found, in the building in the rear of the house, the body of Walton Dwight, at least it was so stated; I had never seen him in his lifetime. There was an autopsy had, on the 18th of November, 1878. I knew one or two of those present, but I didn't know the whole. (Referring to memorandum.) There were two Doctors Hyde, Dr. Orton, Dr. Ayer, Dr. Chittenden, Dr. Richards, Dr. Cobb, Dr. Lane, Dr. Griffin, Dr. Brown, Dr. Comstock, Dr. Delafield, Dr. Jackson and your humble servant. All were local doctors of Binghamton, except myself and Dr. Delafield. I think Dr. Hyde comes from Courtland. Dr. Delafield conducted the examination. I looked on and made some few suggestions; in a certain sense, I had charge of the examination. We found a body there that was, to all appearances, very healthy. I should judge the weight would be 220 pounds, but it is mere guess work. There was considerable settling of blood at the posterior part of the body. There were large numbers of ecchymosed spots on the shoulders and right arm. Little spots filled with blood like the rupture of a blood vessel, as though a small blood vessel had been ruptured and blood had been effused in the tissue. These

spots were very dark ; the blood was exceedingly dark in them. I should judge there were over a hundred of them ; some as big as a pea, and some not bigger than a pin's head. They were on the back, and over the shoulders, and down the posterior part of the right arm, I think. On the left leg, the attention was called to two cicatrices, or scars, old standing scars. The face was pale. The anterior part of the body was pale everywhere. The amount of fat was very large ; I should think, on the neck, there was half to three-fourths of an inch of fat, hard, firm fat—not soft tissue, as you would meet in sickness. The muscles were dark red and exceedingly healthy, just as those of one who died in perfect health. There was a heavy indentation in the neck, commencing on the right side, at the upper part of the wind pipe—the part which is indicated by what we know as the *os hyoides*—that is the hyoid bone, and extending upwards and backwards to within, perhaps, an inch or so, and perhaps less, of the center of the posterior part of the neck. On the left side, the same indentation commenced about the upper part of the cricoid cartilage. It is the lower end of what is known as Adam's apple ; the other is the upper end of it. That extended about the same angle upwards and backwards until within perhaps an inch and a half of the other that I described as on the other side—the other indentation ; the indentations—I think that is about the point—they faded out as they went back a little ; that is a little less posteriorly than on the swelled side of the neck ; that angle as near as I can remember was from 40 to 45 degrees upwards and backwards from the first point indicated. The indentations were I will say, perhaps, full three-eighths of an inch deep, so you could lay your finger right in them, and about that in width I should say, full that. At the bottom of the indentation there was a peculiar appearance—sort of leathery appearance, or

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looked half burned or had a scorched appearance. The indentation was a rounded furrow ; there was no fold of the skin ; in depth I think it was about three-eighths of an inch ; it may have exceeded that a little ; in laying back the skin from the skull blood was seen to ooze. On laying back the skull cap from the dura mater blood oozed in large quantities from both the skull cap and dura mater. The dura mater is the lining of the skull ; the same as the periosteum is the external covering of the skull. In fact it is the internal covering of the skull. On the left side of the head just about over the ear was a clot of blood, I should say an inch in diameter, and perhaps one-eighth of an inch in thickness, shading off perhaps a little at each edge, firmly coagulated but not organized, showing that it was of very recent origin. The pia mater—that is the case covering—or the vesicular covering of the brain—

772 the vesicular covering was stained with blood to a considerable extent just over the top part of the skull. The vessels of the membranes—I don't think they were of the brain—were engorged or filled with blood ; I mean the arteries and veins. The temporal artery divides into three branches, and those were engorged with black blood, and when I say black I mean very dark, I don't mean absolutely black. The blood was evidently loaded down with carbon. The brain I think was healthy ; I think it was not only healthy but was not congested ; I think the brain was normal. The abdomen and chest—that is the whole anterior part of

773 the body was laid open by one long incision, and the skin and fat and muscles, &c., turned back directly, exposing the chest and abdomen at the same time. We found in the cavity of the chest the heart was empty with the exception of about half an ounce of fluid blood ; dark fluid blood in each ventricle ; the left auricle had what was regarded as about half an ounce of granular blood—that is imperfectly coagulated blood ; the color of

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that blood was dark ; The lungs were then examined. They were found congested and engorged. Some portions of them were what we termed congested, that is, they were crowded or crammed full ; for instance, you may take a hose and half fill it and it is not pressed upon, but when you fill it to a certain extent it becomes engorged so that it spreads and expands every part. It was to such an extent they were congested and engorged that they did not collapse, perhaps the want of collapse was due to another additional cause besides that which I will give you in a moment. Over the surface of the lungs were what appeared to be and what unquestionably were these spots with air ; we call them encemacious spots on the lungs. Those were filled with air as though air cells were burst. The tongue was somewhat swollen, it was somewhat seemingly enlarged,—of course I did not know his tongue beforehand—and the epiglottis was congested as was also the larynx. The larynx is the inside of the Adam's apple. The epiglottis is the capper that keeps the food from going down into your windpipe ; they were congested ; the trachea and bronchial tubes were congested, and filled to repletion with bloody mucus ; that would, in part, I say, account for the air not being able to get out of the lungs, or the lungs not being able to collapse ; I asked, therefore, for the tongue and larynx to be removed in order to ascertain whether there was or not any foreign body in those passages, as sometimes they are thus found, and account for many of the conditions ; but aside from the congestion and bloody mucus clogging up the passage there was nothing else to be found ; in the upper lobe of the right lung was found what was unquestionably a cicatrix, perhaps three-fourths of an inch in diameter ; by "cicatrix" I mean scar ; underneath and in the upper portion of the lung was what I term "nodvles ;" I see they have been very emphatically called here "lumps ;" they



were nodules, as you will often find as the result of old standing tubercular lungs; the left lung was tied down somewhat by old adhesions; in the bottom of the cavity of the chest we found about four ounces of bloody serum which had drained unquestionably from the lungs during the thirty hours or thereabouts after death; that you may regard as a part of the lungs at the time of death in its weight; I believe that is all with reference to the lungs. We found the heart, as I said before, empty, with the exceptions I have before described, but perfectly healthy in every particular, except that some little thickening was noticed around the edges of the valves, but that in no wise interfered with their regular and normal action; the heart was healthy in every respect, and it was as large a heart as you could expect with a healthy person of his size; its weight was fifteen ounces; the lungs, with the fluid ex-

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uded, weighed sixty-eight ounces; I will give all this in a few minutes; after going down through the abdomen—there was no disease, so far as we could discover, in the coronary arteries—the heart's own arteries—the arteries that supply the heart with nourishment; I examined it at the next post-mortem, and found they were perfectly healthy; upon examination of the abdomen the stomach contained quite a quantity of undigested food; I could not indicate the quantity very well, but a few ounces, I don't know how much; there was a patch of inflammation in the stomach, about an inch or inch and a half in diameter; there was some softening of the stomach at certain points, but that was regarded as a post-mortem appearance, and the result of the gastric juice; it is what we call a post-mortem action, and that is important also in another connection; if it was a sudden death the gastric juice would be thrown out, and would remain there, and would destroy itself—it would be apt to destroy the stomach; if a slow death, and nothing in the stomach, there would be nothing to excite gastric

juice; the presence of food excited the gastric juice, and that remained there after death; aside from that, the stomach was normal; the liver was normal, natural and healthy, except congested; it was perfectly healthy otherwise; in color and appearance and everything it was healthy; the spleen was also perfectly healthy; it was noted, or some one suggested, it was a little soft, but I could not say, because the organ itself is always soft, it is a very soft organ; the kidneys were healthy, perfectly so, but congested; all the blood we could get from the abdominal cavity, after removing the organs and opening the vessels there, was about an ounce or ounce and a half of black fluid blood; the intestines contained quite an appreciable quantity of fecal matter; that indicated that there had been food taken; this was the fecal part; it was the residuum after taking out the nourishment the body needed. 781

I would state that aside from the clot in the brain and the granular clots in the left auricle there was no clot in the body, all the rest was dark fluid; that is all I think of now. The left auricle where this blood was found—this granular blood—receives the blood from the lungs after it has been oxydized and carries it on to the left ventricle and from thence it is thrown in the large artery, the aorta, and over the whole body. The right vetricle receives the blood from the veins and thence on into the lungs. Those are the offices. There are four of them. Some of them receive from the lungs and some receive blood from the body generally. 782

This autopsy began, I think, between 9 and 10 o'clock in the morning, and I should think it closed in the neighborhood of 1 o'clock. That is the best of my recollection. I think we were two or three hours there. 783

I was present at a later period of time when there was an examination upon the coroner's inquest; that was, I think, about the middle of April, 1879.

The body was exhumed. That examination took place, I think, in a barn near by the burial ground where Dwight was said to have been buried or that this body was buried in. There were present at the examination the two Doctors Burr; I can't tell you now the number of names of the other  
784 physicians from Binghamton — Dr. Bridges and Dr. Sherman were both present. The body was reopened, and various organs in the body were re-examined as far as we could. We examined carefully this same indentation in the neck. It was then plainly perceptible, but not quite as plainly as at first. I felt it at that time and examined it carefully, and the same peculiar condition which appeared before at the bottom of the indentation was present—that sort of leathery or hardened feeling. The color of the skin had changed, but still the bottom of the indentation  
785 was a little different from the other. The color of the whole skin was changed; it was a sort of yellowish color. We examined the heart very carefully, and Dr. Sherman took home several specimens for microscopic examinations. We tried to make a cast of the neck but the heat of the plaster destroyed it entirely. We examined the coronary arteries there as well as the heart, and they were healthy. We found the heart after five months quite firm. It had changed a very little. A very little change had gone on—the post mortem change, while other organs were decayed, for instance, the brain was decayed, but there was but little  
786 decay in the muscles of the heart; in fact the muscles of the whole body were about the same as at the first post mortem. We went down and opened the thigh, where this cicatrix was, and we opened the whole back to see the condition there. There was no injury on the bone under the cicatrix on the leg. The lungs had discharged their contents so that they weighed at that time a pound—they weighed a pound together, showing a difference of

three pounds and a quarter between their weight then and at the time of the first autopsy. I don't now think of anything further in regard to this second examination. I would note that the muscles and limbs and back of the body were very full of blood at this time, that is, of fluid; there seemed to be a separation between the blood and the other parts, as is always the case, but the muscles were moist. Otherwise I don't remember anything more now. The valves of the heart were such that they would perform their functions properly. The muscles of the posterior part of the body at that time were full of fluid. I had stated as to the anterior part of the body that on the first post mortem examination the muscles were measurebly empty; there was that distinction between the appearances at the first and second examinations—but how much was due to post mortem changes I can't say. As to the character of the muscular substance of the heart I saw no change from the first examination, except a slight softening, and they were perfectly healthy so far as I could detect; but microscopically Dr. Sherman will tell what he found; he took away some part of the heart for examination. 787

Q. From your examination of the body at these two investigations and dissection, were you able to form a decided opinion as to the cause of death?  
A. Well, it was not a natural death. 788

(Question repeated.) I think I am; whether the death was a natural death, in my judgment, depends upon what you call a natural death. 789

Q. Was death, in your judgment, produced from natural causes, as it is ordinarily termed? A. I do not regard it a death from natural causes.

Q. What, in your judgment, derived from the examination you saw and made, did death result from? A. I think it resulted from strangulation with a rope.

Q. Give your reasons for that opinion? A. My

conclusions for the opinion I would give are based upon the fact that here is a perfectly healthy body—and finding this heavy indentation around the neck, passing from the Adam's apple, that is, on each side of it, as has been described before, we find a congested membrane of the brain, and a clot  
 790 in the brain, and the heart almost absolutely empty—as empty as it could be from its own action—and the congested liver and kidneys and spleen, with food in his stomach showing that he must have died very soon after eating, and with a plenty of fecal matter in his rectum, showing that he did not—I say for the reasons given I concluded it was not a natural death.

Q. Give the condition of the lungs? A. The condition I have just stated, I think, covers the whole. The general absence of blood; the clots of blood; the fluid condition of the blood everywhere, the dark fluid condition of the blood; the  
 791 almost emptiness of the heart.

Q. What, in your judgment, was indicated by the condition of the bronchial tubes as you found them? A. That it was some compression on some portion of the windpipe so that the air passed slowly, if at all, in the lungs—I mean measurably slow and the blood was not renewed—that is, it was not reoxidized in the lungs.

Q. What did the condition of the lungs indicate, the lungs collapsing? A. It indicated death from Asphyxia. I mean from preventing the air from passing into the lungs.

792 Q. What did the clots on the membranes in the brain and heart indicate? A. That the circulation of the blood had been in some wise obstructed. And this blood I would say had been thrown out and the clot had occurred before the blood had become loaded down with carbon. This indicated that it must have occurred within a short time of death; I don't mean that—but before the blood was loaded down with carbon, and it had not been there



long enough to become organized ; the color of the pia mater indicated that it had been done at the same time, that is, it is presumable it was done at the same time the clot was formed. The blood becomes carbonized, because it cannot pass through the lungs and be oxidized, and it, therefore, becomes black like venous blood.

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Q. Did the condition of the heart and lungs indicate that the heart had acted after the lungs had ceased to perform their office? A. Yes, sir ; it had continued to act as long as it could get any blood to act upon ; it will act often beyond that.

I have within my medical experience and reading known of cases of strangulation ; I don't know of any recently by a cord ; I could not tell you how many I have met ; I have seen quite a number but can't remember how many ; within my medical reading I have come across large numbers, perhaps two hundred and odd. Some of these cases are suicidal and some from ordinary hanging, but as to the hanging of the present day the body drops so far from the scaffold that death is almost instantaneous.

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Q. There is a difference between the cases where there is a heavy fall and where the strangulation occurs from slight depression? A. Yes, sir. Formerly they run them up and let them die by a slower process, but now they jerk them up with heavy weights or let them drop from a distance, and it makes a vast difference between that and those that were executed by the prior mode of execution.

Q. In this experience you speak of cases of suicidal hanging where there was comparatively a slight pressure on the wind pipe? A. Yes, sir.

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Q. State the appearance in those cases which you saw, as distinguished from those you have read of?

Objected to ; the Court sustained the objection. The plaintiffs' counsel thereupon waived the objection.

Q. Is your judgment as to the character of this furrow and what produced it derived from observation in other cases? A. It is.

Q. Were there any cases in which the same appearances were manifest? A. Similar.

796 *Cross-examined by Mr. Smith:*

Q. Give us the names of these cases to which you referred? A. I don't know that I can.

Q. You have just said that you have given your opinion upon what facts you know, and upon cases that fell within your actual observation and knowledge, am I correct? A. Yes.

Q. I wish you would give the names, dates and residences in those other cases so that we can identify them? A. I could not do that, I cannot give any of them.

797 Q. Can you give the name of a man, woman or child or other living creature, or their residence? A. I cannot. They are cases that are dead by this time.

Q. Can you give their residence or date? A. No, for the last five years I have attended fifty thousand people, and I don't know the name of one of them. There is no way on earth that I can indicate to you when and where those cases were to which I have referred in giving my testimony; I told you so at the beginning; I have had some considerable experience for the last fifty years as a witness.

798 Q. Hundreds of times? A. I can't say that, but a good many times—a good many times for you.

Q. Are you able to state from memory now any fact that came to your knowledge growing out of the strangulation of any human being, so that you could identify the circumstance? A. I don't know that I can, Mr. Smith; I tell you frankly that I cannot; I don't keep a record of such things.

Q. Then so far as you give opinions here which are founded on anything, that foundation is reading books? A. Not wholly, for I don't read many. I have had experience for the last thirty-five or forty years. I had one case in Albany, I can't tell how long ago. I can't tell you those facts.

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Q. Have you ever in your life made a post mortem to the extent of cutting up the body of a person whose death you knew to have been caused by strangulation? A. We never "cup up" bodies in the language of the learned counsel; we dissect them; the butcher cuts up, but the doctor ought not to. I was at Binghamton when this first autopsy took place.

Q. Was the body of Dwight cut up? A. I don't know whether it was Dwight's body or not. I said there was a body that was dissected. I don't know that it was the body of Walton Dwight; there is some question about that; it has not been proved that it was his body yet; I don't say that they got the wrong man; whosoever it was, when I went there the body was dissected; it was not cut in pieces: some parts were separated from the others, for instance, the lungs; the heart was taken out; also the stomach; the intestines and the lungs and liver were taken out; the whole contents of the cavity of the body were examined, excepting the pelvis, that was not examined. That is an important part to some people. The tongue was cut out. A portion of the body was put in jars and taken possession of. I took Dr. Porter portions of the intestines and stomach, and of the fecal matter, and a little blood, and Doctor Delafield took a part; I don't remember more than that. I don't remember sealing up anything more than the stomach and intestines; they were sealed up in two or three jars, and taken to Dr. Porter; I think three jars and a vial were taken to Porter. Blood was in the vial, nothing else. Those were taken from there to

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Doctor Porter, and I left them with him ; my share  
 was to carry them to him ; I did not have any part  
 of the body myself. I think Doctor Delafield took  
 a part of the same ; Doctor Orton, of Binghamton,  
 took a part ; I don't remember the number of jars,  
 or how they were distributed. I think there were  
 802 sixteen doctors there, and a large portion of those  
 I understood were old acquaintances of Dwight ; I  
 think one was his brother-in-law ; I understood it  
 was Dr. Ayres. I am inclined to think that none  
 of those were members of the coroner's jury. I  
 presume that these doctors had an opportunity to  
 see all of the different parts and elements of this  
 body that I did, if they looked ; they can  
 answer for themselves ; I suppose they did  
 if they looked ; I am not their keeper ;  
 they know what they saw ; I presume they  
 had the same opportunity of seeing that I  
 803 had ; I don't know that there were any insurance  
 men there on the first occasion ; there was no  
 coroner's jury on the first occasion ; there were  
 strangers there I don't know. I don't know any  
 thing about the subject we were operating upon  
 being really Dwight's body or not. After I got  
 through I went home to Albany that afternoon.  
 After the lapse of about five months I went again  
 to make a further examination of the body we had  
 examined on the 18th of November ; some said it  
 was Dwight's body, and others said it was not ; we  
 went to the graveyard. I don't know how he was  
 buried ; I assume he had a christian burial ; they  
 804 are a christian people there ; he was put in the  
 ground and covered up according to the ordinary  
 customs of the country ; on this second occasion he  
 was dug up out of the earth ; I am not sure  
 whether the coffin was taken into a barn there or  
 not ; I can't remember the coffin as well as the  
 auricle of the heart ; he was weighed in the coffin  
 and the coffin weighed afterwards ; I think the  
 body weighed 177 pounds after the leakage. I have

had experience as to a man's leakage after burial. I  
 have taken up hundreds of them. We removed eigh-  
 teen thousand at Quarantine at one time under my  
 supervision I don't remember what further dissection  
 was done after the weighing ; we opened the body  
 where it had been opened before ; all the organs were  
 examined ; there was no cutting made except on the 805  
 thigh ; where it was alleged he had received a bullet  
 wound some time or other ; I don't know that I am  
 the man that took his heart up and stuck my finger  
 through it ; I shouldn't wonder ; it would be just  
 like me ; I couldn't say how many persons were pres-  
 ent then ; there are a good many neighbors around  
 there ; I don't remember now how many doctors  
 there were ; I can't remember only those I have in-  
 dicated ; I was not in the employ of anybody when  
 I perpetrated that act ; I don't remember of any-  
 thing being carried away at that time, except small  
 sections of the heart ; there was no cutting done 806  
 about the neck on that occasion ; the posterior  
 part of the body—the spinal column—was opened ;  
 the body was turned over on the face and the  
 spinal column was opened ; something was cut out  
 of the back, perhaps 12 or 14 inches—was some of  
 the processes that extend out back ; the horns of  
 the spinal column that extend back, and to which  
 the muscles are attached—that was cut away to get  
 a view of the spinal cord ; I do not remember who  
 suggested the idea of cutting down along the spinal  
 column, so we could get a view of the spinal cord ;  
 I think it was Dr. Burr that did that ; he made the  
 examination. In connection with this second an- 807  
 topsy, there were several things that we had not dis-  
 covered on the first, that we desired to see ; we  
 wanted to be more sure, that is, to be more positive  
 about the condition of the heart ; we wanted to be  
 sure, positively, about the condition of the bron-  
 chial tubes ; that is about all ; we wanted to see  
 the weight of the lungs ; I do not know the reason  
 why all this additional cutting was done, because



Dr. Burr did it ; I may have suggested it ; I may have asked for it ; I cannot tell what it was that I suggested should be done in the way of cutting ; I don't know that I could tell any of it ; I suppose we were engaged in that second examination three or four hours ; perhaps five hours altogether, including the disinterment of the body ; I do not know that there were any insurance lawyers there to help ; they may have been there—I don't remember now ; we found congestion of the bronchial tubes—just what we found before, and congestion of the larynx ; I have known of a person having died without congestion, since God made the world ; yes, one lived very near me—William J. Hadley—he died without congestion ; I think you knew him in his lifetime ; in the ordinary change that occurs when death ensues, some of the blood vessels are emptied and some are not ; that is not the ordinary event ; you will find blood in some of the veins somewheres, exactly where and to what extent nobody knows, unless they dissect them in order to know.

I mean by “muscle” the lean flesh, the moving power of the body ; when I talk about the “moisture,” that is the fluid portion—the blood ; it keeps it from becoming entirely dry, like a piece of dried beef ; by examining the posterior part of the body of Dwight, we found just that ; I think the muscles are always moist in the posterior part of the body after death ; if a man should die lying on his other side the moisture would be there, most assuredly. The process of settling or sugillation, if it takes place while alive, they call it infiltration ; when a man is hit on the nose, and the blood runs down and colors the nose, that is infiltration—when it gets out of the vessels it is no longer infiltration—then the ecchymosis follows ; that means a black and blue spot, in one sense. I said that the back side of this man's arm was in an ecchymosed condition ; instead of being a diffused condition it

was a localized ecchymosis; this ecchymosed condition was about the size of the head of a pin ; some of them as big as a pea ; they may have been as large as a marrowfat pea, but I don't think quite as large as that ; these ecchymosed conditions on the skin of the posterior upper part of the body were something more than the common pimples you see on a man's skin ; it was effused blood between the scarf skin and the true skin. The scarf skin is the outer skin of all ; this blood was not in the blood vessels ; it was external to the blood vessels ; these little blood vessels had broken. As a matter of science or skill these spots are probably not mentioned anywhere as alone a symptom upon which any opinion can be rested as to the cause of death ; the moment the blood stops running through the lungs so as to be exposed to the operation of the air which is inhaled, it begins to turn black ; the blood will continue to reoxidize so long as the lungs act ; when the lungs have ceased to act, and the man has ceased to breathe and is dead, his blood does not necessarily nor generally turn dark colored right off ; there may be no change at all ; that will depend altogether—if you will allow me to explain—there is no change after one is dead, it remains just as it was ; the same amount of carbon is in the blood and remains in it as it was at the time of his death, and the air continues to go through after he does die ; the oxygen remains with the blood as a part of the blood, and as an oxidization of the iron in the blood ; I don't know that I have ever seen the body of a man killed by manual strangulation—I understand choking means manual strangulation; the books regard strangulation as manual strangulation, and they call asphyxia, or at least death from the rope, another thing; asphyxia doesn't mean strangulation; it means that the air is cut off from the lungs ; I mean that there is no reoxidation of the blood and the blood remains in the lungs ; the lungs become

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- filled and they cannot therefore oxidize the blood ; that is the technical meaning of the word "Asphyxia ;" if they get congestion of the brain, they die from asphyxia of the brain ; I have seen plenty of cases that I can mention of men having died
- 814 from asphyxia ; I can't give the name of any of them, nor the place, nor the time, but I can tell you of dozens and dozens of cases where I went to the vaults and made examinations of them afterwards ; you will excuse me from giving the names for I might get into trouble ; in the pursuit of science you do things that you would not otherwise do ; here is a poor fellow just sent from Syracuse for the study of science—I have said that I couldn't answer the names of the persons, nobody knows better than the counsel how much I have done in that direction, and how unwilling I would be to mention the names even if I knew them, but
- 815 I don't know them. Nobody but Professor Porter employed me to come here ; I don't know when, I think it must have been on the 16th of November, 1878 ; he did not employ me to come here as a witness ; I was subpœnaed last week ; I don't know by whom ; a gentleman came to the office on the part of the Germania Life Insurance Company, I suppose ; I came up Saturday night ; a week ago Sunday morning I arrived ; I have been engaged here very little in preparing this defense, and have been in consultation on the subject very little ; they have asked me some questions, or have asked me to tell what I knew, or something of that kind ; I have not been
- 816 in consultation with the defendants upon their testimony ; I supposed I would be wanted Monday so I came through Sunday ; I was subpœnaed to be here Monday morning ; I have not been engaged at all in the preparation of this defence and in consultation with the witnesses ; I have attended only one meeting of doctors, held in consultation upon this case ; I was there perhaps half an hour ; I gave no advice about it ; I have not sent for a book of any

kind or nature, mine or anybody else's ; I remember of having taken an active part in procuring that second examination of the body ; I did not threaten a coroner with unpleasant processes to be used towards him if he didn't act ; I did not initiate any legal proceedings ; I made an affidavit ; I have seen my testimony as entered in the books here, since I have been here ; I have seen a printed book of testimony, one that purports to give my testimony as given before the coroner's jury, of what I said and did there ; I have read that book ; I read it four years ago, and I lost sight of it until now, quite recently, I asked for one and looked it over ; I have not made a careful examination of it ; I have not read it so as to be able to say whether the statement in that book of my testimony is correct or not ; I can't remember without going through it in detail. 817

I signed what was alleged to be the autopsy at the first examination ; I signed a paper that was alleged to be the examination of this man's body ; I don't know anything about where the paper is ; it has never been in my possession ; there was one produced at the coroner's inquest when I called for the original paper, said by them to be the original paper, but it was not the original paper ; I have never seen the original paper. 818

[The Court here directed the Clerk to produce the paper in the Clerk's possession, placed there by the Court, and received from Dr. Orton's hands.] 819

I stated that I made an examination of the bronchial tubes of this body of Dwight ; I made a personal examination at the second post-mortem, that is, after the body had been in the earth ; all there was of the bronchial tubes was there ; I can't tell how many bronchial tubes there are in a man, perhaps from 1,000 to 10,000 ; they spread out like the



branches of a tree ; here is a main stalk, and they spread out in thousands of branches ; the diameter depends upon what part of the lungs they are in ; they vary ; some of them are three-eighths of an inch, and some of them are larger and some smaller ; some are not bigger than a pin, perhaps ; I examined these at the first autopsy ; I examined them as the examination was made ; I didn't open the lungs for the purpose of going into them, or at least Dr. Delafield didn't ; I examined those in the first autopsy, so as to be able to testify as to their condition now ; I saw then as they were cut off from the trachea—as the lungs were cut off ; the trachea is the trunk of the tree ; as you go down from the Adam's apple the trachea continues down about six inches and then divides off into two tubes, the right and left bronchial tubes ; after they were cut off they were left in the lungs, of course ; I didn't say they were cut from the trachea and cut across between the trachea and the lungs ; that was all the opportunity I had to examine the bronchial tubes, as they lay there in the cavity of the lungs ; I saw nothing more than that there was bloody mucus ; bloody mucus in the lungs is a very rare occurrence ; it never is there without some remarkable condition ; the bronchial tubes were congested.

Q. I want to know of you whether you ever saw a body with moisture of the muscle and tissue, and in the cavity, cut up and laid down in the remains of the lung, without there being moisture ? Was there ever a bronchial tube taken out that was not moist, and where there was not mucus ? A. You are speaking of mucus, and I speak of bloody mucus.

Q. I am speaking of bloody or any other kind ? A. These lungs were in the cavity of the chest at the time of the second post-mortem examination, but no blood could get down ; whatever blood and mucus there was in at the time of the second post-



mortem examination must have been there at the time of the first post-mortem examination, and we went through the lungs as carefully as we could, to see if the bloody mucus was in all these bronchial tubes, and they were so found. Dr. Sherman took sections of them himself, and he will tell you what he found. 823

Q. Have you ever known a case, I say, where the bronchial tubes were cut out and laid down in the lungs or cavity of the chest that there was not moisture? A. They were not cut out—the bronchial tubes were not cut out. You misapprehend the whole subject, Mr. Smith, I said they were cut off, but not cut out. It would take a month to dissect them out from the lungs.

Q. Have you ever known a case where they were free from moisture and blood where they were cut off, in any man or beast? A. They always have moisture, but never have blood, except where there is violence used. 824

Q. Did you ever see a case, since you were born, that you can name, of the man or being showing a condition of the bronchial tubes where death is produced by asphyxia? A. Yes, sir; the wife of the Rev. Henry Budge. It was a long litigated case, if you remember, and turned upon that very point.

Q. I suppose you have no more knowledge of the cause of the death of Mrs. Budge than what what was discovered by some such process as this is; you had no personal knowledge of it? A. I was not there at the time she died. 825

Q. Did you know about it beyond what you learned on the examination and the trial? A. Yes.

Q. You were a witness on that trial? A. Yes, I was a witness.

[The paper in sealed envelope here produced and opened by the Court. The papers having been produced in pursuance of a subpoena or notice

served upon the Equitable Insurance Company; they were produced by Dr. Orton, who presented them to the Court.]

826 Q. (Paper handed witness.) Will you look at the bottom of that paper now shown you? A. That is my signature; I signed that; but these notes have been re-written; there are some that may not have been.

*To the Court.*—This paper consists of 12 half sheets; the original paper, written upon one side of each sheet; and each sheet is numbered on top from 1 to 12 inclusive.

*By Mr. Smith:*

827 Q. Are you able to state how that page is numbered upon which your signature occurs? A. It is the 12th, as numbered here.

Q. Now, was the paper read over before you signed it? A. It was read over before the post-mortem was done, and before the whole thing was written—all the notes had been made. The paper was read over to me before I signed it. I am not able to say who read it; I know it was read. I have no recollection at all on that subject, but I think it was young Dr. Burr who read it. I think all the doctors were present; I presume they heard the same reading; I assume they did; I assume they all had ears. Dr. Delafield called off the notes as he passed on, and I think young Burr wrote them.

828 *To the Court.*—He called off the results of the examination?

*To Mr. Smith.*—And beyond that Burr composed and wrote it down. After it was written down it was read over.

Q. In the presence of how many different doctors? A. I suppose they were all there; I don't know; I presume they were; I don't know that 16 were

[NOTE.—A fac-simile of the notes of this first autopsy above referred to is contained in the Appendix. See page 397.]

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there; I think about that number; I think they all signed.

Q. Have you read that paper over? A. No; not generally.

Q. Does it look as it did then? A. I didn't see it then; I saw only this one sheet when I signed it.

Q. Was not the general appearance of them as they are here to-day? A. It is the same paper and same handwriting. 829

Q. You have been understood to say while on the stand here that the paper had been changed? A. I did, most emphatically.

Q. Do you mean by that that there is any change in the matter written on it? A. Yes; there is some of it that is left out, and there is some of it left in—that is interpolated.

Q. If you have not read the paper, and you cannot remember you have ever read it, I would like to know how you know there is anything left out? A. I will read it, then. 830

Q. Not now; you say something is left out; how do you know it if you haven't read the paper? A. I know the first page tells it; I have read the first page; I know what is added to it; I didn't say there was anything left out on the first page; I know something has been added which is a falsehood.

Q. My question is as to anything being left out? A. No, I don't know as there is.

Q. You don't know that anything has been left out, then; do you know that anything has been put in? A. Yes. 831

Q. Did you see that before you looked at the paper? A. No; I saw it when I looked at the first page; I said the paper presented to me at the inquest was not a true paper; it purported to be a true copy. I now say that something has been written in that paper I hold in my hand since I signed it; I know that from memory; it occurs on the first page; I have not been through the others; I have

read over the first page so as to know. "Drs. Swinburne and Ayres think the same caused by bending the head and neck backwards," that has been inserted; that is all on that page; I made this discovery after the book was published; I think I saw it before that in the newspapers.

832 Q. How long after this was made did you discover it? A. Within a month, I should say, easy enough.

Q. Did you afterwards make any representation about it to these gentlemen? A. I did at the inquest; I stated it was untrue in every particular; I never had made or signed any such statement; it has been interpolated and forged; on the second autopsy there was a coroner's jury, as I understand it; there were six jurymen and a coroner—all doctors; Mr. Richards was the coroner; I presume they all had the same opportunity I had to see everything that I saw, if they wanted to look; I think they were repeatedly invited to do it, and to take notice of everything that occurred; they may not; I understand they were repeatedly notified by the coroner to witness and take notice of everything. When a man dies, his blood decays like the rest of his body; in a man of full health and Dwight's size, when he dies, I should say a very large portion of the body was fluid; I can't tell about how much fluid there is in the arteries and veins of a man of Dwight's size and habits, when he dies, without going to the authorities upon that subject; it is laid down as a rule about what proportion of the whole body is fluid; I couldn't give about the quantity, because I don't remember; I have not paid attention to the subject, and have not thought of it, and have not looked at the subject; I should think there would be several quarts ordinarily—all the blood that could be extracted from the body; enough to amount in a body of the size of Walton Dwight to probably 15 quarts; I should judge that when such a man dies the blood runs

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away; it leaks out of his body; when death takes place the blood stops in the vessels; it remains along in the arteries and veins wherever it is when he dies, except by gravity it goes down; that settling of blood is called sugillation.

*Re-direct-examination by Mr. Russell :*

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Q. There were questions asked of you in regard to the ecchymosed spots that appeared on this body you examined, as to their character and appearance, and what they signified; I would like to have you explain in your own words, without interruption, their appearance and signification?

A. I know of no cause that will produce a condition like that in a person as healthy as Walton Dwight, as healthy as this body seemed to have been from the post-mortem—that will produce a condition like that, excepting interruption of the circulation in the lungs, or in other words, by asphyxia; I know of no other. 836

Q. State their appearance a little more definitely?

A. They were very dark colored—dark, like venous blood; I mean black, and they seemed to project from the skin, like, say, a third of a pea upwards, that is, like the section of a little globe.

Q. And what produced those spots? A. It is blood leaving the vessels and going between the scarf skin and the true skin; if it was below the skin it would be diffused.

Q. What produces that result of the blood leaving the vessels and going where you indicate? A. The blood is presumed, when oxidized, to be thin, and the vessels cannot hold the blood as readily as at other times; it is like the blood in certain diseases where it is thin, but in this case it is put in that condition by the action of the carbon; carbon puts it in a condition where it won't coagulate, and hence, if it is thrown out between the true skin and the scarf skin, it is in the form of little 837



semi-globes, but it is all due to the thinness of the blood, and its escape therefrom, but why it should come out under those circumstances I can't tell you.

Q. Well, hasn't the action of the heart, in acting powerfully in the early stages of asphyxia, something to do with the production of those spots?

838 A. The action of the heart, in the early stages of asphyxia, would not produce it; it is only when the blood becomes thoroughly carbonized that this takes place; the effusion in the brain was evidently done during full life, and these clots were done while the blood was still dark and full of carbon.

Q. You were inquired of as to when the blood begins to turn black, as to the time of death; explain your meaning fully on that subject? A. The blood begins to turn dark whenever the air is excluded from the lungs, and the oxygenation diminishes.

839 Q. You were also interrogated as to cases of strangulation, and you stated you could not give the name; give the reasons why you can't give the name? A. In many instances we get the knowledge in a way that might, perhaps, not be considered fully legal; again we would get them from persons we don't know anything about—at the dead house, whose names are not known, and in the multiplicity of those things I don't keep a record, and out of the 50,000 I have attended during the last five years, I don't know that I can mention a single name, unless there was some peculiar circumstance that drew my attention especially where

840 there was something connected with their history.

Q. Now, with reference to the Coroner's inquest, did you have any part in that examination, or in questioning the witnesses? A. No, and no one else, excepting the Coroner's jury.

Q. You also said that the existence of bloody mucus in the bronchial tubes was extremely rare?

A. I did say so, because there are very few that die in a way that would give you bloody mucus.

Q. The counsel asked you in regard to the cutting of the bronchial tube ; state the manner in which it was cut, if at all, on the first examination ? A. No ; they were only cut—the lung cut from the trachea—that is, the ordinary windpipe would 841 leave open one or more bronchial tubes ; those tubes go to the lungs, and divide and ramify through the lungs, and finally terminate in little air cells, and when you cut off the lungs you have the bronchial tube exposed ; that is, you see their inner side and lining, and so as to the trachea.

Q. There was no such thing as cutting the bronchial tube out of the lungs ? A. No, sir ; you might cut out pieces ; the lungs are made up of the bronchial tubes and air cells, and connected with tissue, and that is all there was of it.

*Re-cross-examination by Mr. Smith :*

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Q. Was there a lawyer present representing the insurance companies at this inquest ? A. I don't know. I think Mr. Magone was there ; I think we went together. He went there. I don't know whether he was there at the inquest, I don't believe he was. I presume that I wrote questions and handed them in to be put by the Coroner ; I can't remember, I don't know that Mr. Magone did. I can't tell. I don't know but that Mr. Richards was there, but I don't know whether for the company or not. I don't know that he wrote ques- 843 tions to be put.

Q. I want to know of you, whether you mean to be understood by this jury as saying that the reason you can't give the names and circumstances of persons whom you have examined who have died by means of strangulation, that it is connected with grave robbing ? Is that what you mean ? A. I didn't say that ; that is not what I mean ; it is

not connected with any wrongful possession of the bodies.

Q. Then it is because you don't remember? A. No ; perhaps not altogether that ; I remember the facts, but I don't remember the names.

844 Q. I want to know whether you mean to be understood as swearing positively and without qualification that you ever made or witnessed the post-mortem of any single body in this world who come to his death to your knowledge by strangulation? A. Yes.

Q. Then do you mean to say any such thing occurred in your career as a man coming to his death by strangulation and you not remember who it was? A. Yes.

Q. You don't remember who it was or where it was? A. I mean that. I remember of an instance of Mrs. Budge which has become a famous case.

845 Q. You put that in a book? A. No ; I don't print books.

Q. (*By Mr. Russell :*) Were there any questions permitted to be put on that Coroner's inquest, by you or by any other person save the coroner and the members of the jury? A. No.

Q. (*By Mr. Smith :*) Are you able to answer from memory and say just what you have stated, that no questions were permitted to be put, except by the coroner and jury? A. Yes.

846 Q. That you remember ; now, if you are able to remember that, why can't you tell whether written questions were furnished to them to be put? If you remember one thing why don't you remember the other? A. I said to you I thought there were questions written.

Q. Why do you remember one and not the other? A. One is very significant and the other is not ; I can't say that I remember whether questions were written to be put or not, but I think they were. I have finished reading the paper to which my atten

tion was called last evening (notes of first autopsy).

Q. Is there anything, so far as you know, that was in that paper when you signed it that is now omitted? A. Yes.

Q. Give, as near as you can, those words you think were thus omitted? A. The word "cicatrix" is omitted; it is scratched out—in addition to "nodules"; there are others added; there are other words omitted than the word "cicatrix." On page 6, the word "bloody"—the word "cicatrix" is omitted on page 6; I don't remember of that word "nodules" being there when I signed the paper; the word "nodules" is written in the place of cicatrix. I think "cicatrix" was stricken out since I signed the paper; I think it was, to the best of my recollection; but I wouldn't say positively, because I didn't see it done. 847

Q. Was the word "nodules" in there when you signed the paper? A. I should say not, because the word "nodules" has been interlined. 848

Q. Can you remember, so as to testify to it, whether the word was in there or not at the time you signed the paper? A. I should say it was not in there.

Q. Now, is there any other omission which you can point out and indicate? A. I would say on page 9 the word "chronic" is interlined.

Q. Are you able to point out any other omission in there—anything that was in that statement when you signed it, that is not in there now? A. Yes; the words "bloody mucus." In reference to the bronchial tubes, on page 6, also, it is omitted; it does not appear on the paper at all. 849

Q. If it does not appear on the paper at all, then the paper is just as it was when you signed it in that respect? A. Not necessarily, by any means.

Q. Do you mean to be understood as testifying that in the paper that you signed, those words

occurred but do not occur on this paper—do you mean to testify to that? A. To the best of my recollection.

Q. Do you mean to testify to it without qualification? A. As it was read—yes.

850 Q. Who read it? A. Dr. Daniel Burr—so called —I mean by that, that he was called Daniel; I suppose that is his name.

Q. Can you tell between what two words those words “bloody mucus” occurred in the reading that does not appear on this paper? A. Between the word “with” and “mucus”; in the expression, “bronchi congested and coated with mucus,” the word “bloody” is left out; it is only the word “bloody” that is left out.

Q. Now, can you point out any other omission in that paper wherein it differs from what it was when you signed it? A. I do not discover any from the reading of this; I don’t know of any  
851 now.

Q. Point out anything there is in that paper that wasn’t there when you signed it? A. The name, “Dr. Swinburne,” has been put in there since it was signed, and there is a dash and a cross on the first page; I will say that there are two Dr. Swinburnes there, so I want it to be distinct and positive where it is; I don’t see any other addition on that page.

Q. The question is, as to the paper? A. I was then looking at this page, and stated that on the first page were the words, “Dr. Swinburne,” together with a dash and a cross had been added.  
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Q. Are you able to make any further answer to this question? A. I don’t see any other.

Q. On the paper? A. I don’t see any other.

Q. This character which you see on the first page of this paper and call a dash is a straight horizontal line in the margin at the left hand of the word “doctor,” isn’t it? A. Yes; about three-eighths of an inch in length.



Q. And the words that occur there under "Swinnburne" are the words Dr. Ayer? A. Yes.

Q. And this character that you call a cross is directly at the left hand of the words of "Dr. Ayer"? A. Yes.

Q. And that character which you call a cross is the ordinary character of plus in arithmetics? A. 853  
I suppose it is. It means "plus"—that is, they have "plussed" it in. Young Dr. Burr wrote that paper that I signed. He also wrote the paper that I signed there during the course of the proceeding at which Dwight was dissected on the 18th. I think that he had a board that he held in his hand and then wrote upon it. Dr. Delafield dictated the matter to be written. I made several suggestions; I don't think anybody else did at the post-mortem.

Q. Then the office that Burr performed so far as you know was that of a scribe to take down what 854  
was suggested to him? A. I suppose—I presume so.

*By Mr. Russell:*

Q. Did the paper that you signed consist of sheets attached together, or was it composed of different sheets of paper? A. Sheets of paper different; I would say before you go to that, that there were two sets kept by Dr. Burr.

Q. And was there more than one of those two sets read? A. No.

Q. Were there two sets that were signed by anybody? A. No. 855

Q. And the paper that you signed was the last paper of several detached sheets? A. Yes; how many I don't know.

Q. Did you see or read for yourself any portion of that paper after it had been written? A. No.

Q. Then you simply signed it supposing it was correct? A. It was signed after these amendments

which were suggested were supposed to have gone in.

Q. By "amendments" you don't mean these alterations which you suggested here? A. Yes, sir; they went in at that time mostly, they were in at the time it was read. For instance that one on the first page. That first page was written full and written clear down. "Dr. Swinburne" was not interlined then.

Q. Then the additions which you pointed out here as not having been made to your knowledge were not there to your knowledge when you signed it, were they? A. No.

Q. Nor were the omissions you refer to there? A. No.

Q. You supposed they were added? A. Yes, I will explain that first page.

Q. Explain anything you desire in regard to the incorrectness of the first page. A. When the report was read after the autopsy was finished on reading the first page Dr. Ayer suggested—this first page was written full—this page was written full and this was interlined there on the side by some one else.

Q. What word? A. The words "Dr. Swinburne and Dr. Ayer think the same was caused by bending of head backwards." That was interlined, and therefore this sheet must have been written full, that is the reason why I say it was rewritten.

Q. Do you mean that those words "Dr. Swinburne and Ayer think" were put in there before you signed the paper? A. No; the word "Swinburne" was never in there.

Q. Before you signed any paper? A. No, it was not.

Q. On the third page were the words "inner surface of dura mater on right side unusual vascularity there"? A. That I don't remember.

Q. On the second page were the words "small

clots" in the papers as read to you? A. Well "clots" were noted, but I don't know whether the word "small" was or not; that was coagulated—I think it was "coagulated"—I think so but I couldn't say as to that.

Q. Was the clot of blood you saw in the brain any sufficient cause of death? A. No, it was not. 859  
It was between the dura mater and the pia mater; it was not in the brain tissue at all.

*By Mr. Smith:*

Q. Do you know how much blood must be clotted in the brain to cause death? A. No.

Q. Was this paper read over and were suggestions made as the reading progressed on the occasion when you signed it? A. A paper was read of which the last sheet is a part.

Q. Did anybody suggest the words "bloody mucus"? A. No; it was in at the post-mortem. 860

Q. Now do you mean to be understood as testifying that you can remember now, as you sit in that chair, what was said upon the subject of dura mater if I get the words right? A. I can't perhaps remember the words.

Q. Do you think you can remember the substance of any sentence that is in this paper from memory so if I should ask you to repeat it now you can repeat it? A. I can remember all the facts.

Q. The substance of any sentence that is in this paper so you can repeat it? A. No; I don't think I can.

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THOMAS W. WHITNEY, called as a witness on behalf of the defendants and sworn, testified as follows:

*Examined by Mr. Larocque:*

I reside at Binghamton; have resided there all

862 my life ; my occupation is that of a jeweler ; have been in that business for about fifteen years ; my place of business in Binghamton is corner of Court and Washington streets. I was acquainted with Col. Walton Dwight in his lifetime ; I knew him well ; he was in the habit of coming into my place of business occasionally. After his troubles at the Dwight House had been closed I recollect an interview with him in my store, when the subject of Chicago was talked about ; in that interview he spoke of "getting to the front," as he called it. Something was said upon the question of poverty—about his losses. He spoke of his misfortune and said he had got to get to the front, and spoke, I think, of going to Chicago. That is about all. He made the remark that a man might as well be in hell as to be poor.

863 *Cross-examination by Mr. Smith :*

I agreed with him ; he was talking there ; he was there some time ; there was pretty high talk ; he felt good ; this was before he went to Chicago ; he was talking of going to Chicago—about going out there and teaching those fellows how to make a "corner" and how to speculate, and how to be rich and not be poor any more.

Q. After he had got things fixed in that way was there anything said about his coming back and giving these Binghamton chaps a little instruction ?

864 A. Yes, he spoke about coming back and having some money. He talked pretty big ; I don't remember much what there was of it.

P. K. BURHANS, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in Binghamton ; have resided there since 1872. In 1878 I was in the insurance and real estate business. I represented the Metropolitan Life Insurance Company of New-York. An application came into my hands, as such agent, in the month of September, 1878, for a policy on the life of Walton Dwight ; H. C. Hermans presented such application to me. I had no conversation upon the subject with Mr. Hermans, prior to his bringing me that application, on September 5th, 1878,—the same day I had. He came and asked me for a blank application, and I gave it to him. An application, filled up, came into my hands afterwards, on September 5th ; I sent it to the company, and got back a policy on the application. I delivered the policy to Hermans. Up to that time, I had never seen Mr. Dwight on that subject. I received back the policy September 10th, and delivered it to Hermans. About September 30th, I think, I received a letter from the company. (Paper handed witness.) That is the letter received by me from the Metropolitan Insurance Company, September 30th. I wrote back to the company and asked them some questions. I subsequently got an answer to my questions. (Paper handed witness.) That communication was received October 10th, 1878, in answer to my request. I subsequently had an interview with Colonel Dwight, on the subject of these communications, and exhibited them to him. I can't exactly tell the date when I saw him first—it was somewhere between the 10th and 15th of October, 1878. I think I saw him about the 13th. I don't think it would vary a day. I saw him on the street. I delivered that letter of October 10th to

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him. I don't recollect whether I gave him the other.

The letter referred to was then introduced in evidence by counsel for the defendants; it was marked exhibit No. 83.

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As I have said, I think I met Colonel Dwight on the street, on the 13th, as near as I can recollect it. I told him I had received a letter from the company, and they were dissatisfied with carrying the policy. And I walked along with him to the Broome County Bank, and told him if he would wait until I went into the bank and got the money, I would pay him, and he said, "No, walk along, I am going to the Spaulding House; walk along down." And so I did, and I got down there and talked with him some. It was about 11 o'clock in the morning, and

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I told him I would come back and get the money, and come down and tender him the money. He said I was all right, "I don't blame you; you are doing your duty, but I calculate to give no policies back." And I went back to my office, and got detained there, and did not go down the same day. The next morning, they told me he had gone to New-York on No. 12, at 11 o'clock, and they said he would be back that night. The next morning,

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I went down about the same time, about 11 o'clock, with the money. He was sitting in his room, and said he was feeling sick. He said he came back from New-York, and was sick. I offered him the money, \$66, and demanded the policies. He said he would not give up any policies, and the insurance companies were all making fools of themselves, and he didn't see what they were all kicking about. I told him that it was on account of his spitting blood. He said, "I have not spit blood; I have not misrepresented my application, and if I die, they can cut me up in shoe strings to see that I have not misrepresented myself in

the applications or policies;" he said, "I have not misrepresented at all"; I think that was the first talk in which I showed him the letter Exhibit 83—the first time when he went to New-York in the evening. I spoke to him about his having answered in the applications that he had not had spitting of blood; he said I was not the first man that had been down to try and get back a policy. He said he had not heard of anybody getting them back yet, and then he turned to me and said, "I am sick, I am very sick, I am feeling very bad indeed, I am so anxious to get well to go to Chicago. I have a big scheme I want to put through in Chicago." That was about the drift of the conversation we had at that time. I didn't get the policy, I know. 871

(Paper handed witness.) This paper, Exhibit 63 is the policy that was obtained on the application I referred to.

(Paper handed witness.) This paper, Exhibit 42 is the application as to which I have testified, on which the policy Exhibit 63 was issued. My first interview commenced on the street; my second interview was in Col. Dwight's rooms at the Spaulding House, in the cottage. At that interview, he did not look to me very sick; he had just commenced being sick. I told him, "I don't think you look very sick," and he said, "I am feeling very sick and you can't always tell how a person feels by looking." 872

*Cross-examination by Mr. Newton:*

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I remember exactly the time I handed this policy to Mr. Hermans; it was, I think, September 10th, 1878, and in my office. I got the premium at that time, right away in less than fifteen minutes. I received a letter from the company September 3d. (Produced.) I received one earlier than this from the company relative to the reduction of this

874 policy. I had no interview with Mr. Dwight relative to this reduction after the application went out; I had such an interview with Mr. Hermans; the company refused to reduce it; after the request to get this policy reduced was made I sent a telegram to the company. I do not remember the purport of that telegram—its general purport and what the request was that was in it. I received an answer to the telegram I sent; I have got it somewhere, but not here; I found it once, six months or a year ago; I have not recently looked for it; I think it is down in my safe at Binghamton. I have the letter now to which I referred in my cross-examination. (Same produced.)

The counsel for the plaintiffs offered the letter in evidence.

875 Objected to as immaterial, having no bearing upon any question that is presented in this case; it is something that was apparently received before the company had notice which led to their subsequent action which the witness has testified to, and when they were in entire ignorance.

The Court overruled the objection, to which ruling the counsel for the defendants duly excepted. It was marked "Exhibit M."

*Re-direct-examination by Mr. Larocque:*

876 Q. When was that letter received? A. I think it was September 7th.

Q. Was that before any policy had been received? A. Yes.

Q. Was it before you had received any notice from the company that they had information tending to show misrepresentation in the application? A. It was before.

HORATIO C. WOOD, called as a witness on behalf of defendants and sworn, testified as follows :

*Examined by Mr. Russell :*

I reside in the city of Philadelphia ; I am a physician ; have been a physician since about 1862, 877  
about twenty-one years and a half. After graduation in the University of Pennsylvania in 1862, I went in as resident physician in the City Hospital, and stayed there one year ; then occupied a similar position in the Pennsylvania Hospital ; from there into the service of the United States Government and was stationed at various army hospitals in Washington and Virginia ; I then resumed the practice of my profession in Philadelphia, as near as I can recollect about 1869, but I am not sure of the year, and was elected visiting physician to the City Hospital, so-called—Philadelphia Hospital—where I have been ever since ; and a year or two subsequent 878  
to this I was elected to the Professorship of Nervous Diseases in the University Hospital and I have charge of that department there both in the hospital and the dispensary service ; of course, during all those years I have been engaged in the private practice of my profession in the city of Philadelphia ; I have investigated and written works on different medical subjects ; I have written a number of works on scientific subjects, and a very large number of papers on medical subjects. Of books, I have an elaborate book on “Fever” published by the Smithsonian Institute, 879  
and a book on “Sunstroke.” One entitled “Brain Work and Over Work,” published in Philadelphia by Lindsay & Blakson. A book on “Therapeutics or the Treatment of Diseases,” published by J. P. Lippencott & Co., and in the last edition of the United States Dispensatory I was senior editor and responsible for all that appeared in the book. I may say that the additions were such that

the book was almost a new book, nearly two-thirds being new. I am a member of the National Academy of Science; there are two physicians in civil practice in the United States in that body, so far as my knowledge goes; I am one of those two; I am familiar with the holding of autopsies; it is hard  
 880 to give a definite number of those I have taken part in; in my early years, I made three a day for weeks together; I have made many hundreds and possibly thousands.

Q. Were you at any time familiar with a case of congestive chills? A. Yes, I have seen it in the city of Philadelphia.

Q. Did the case originate in Philadelphia or did it come from other quarters? A. I have seen one case originate there that I remember and one case coming from outside; I have an indistinct recollection of seeing other cases, but I cannot fix the date or times.

881 Q. What are the lessons that medical science teaches upon the examination of the human body, after death?

Objected to on the ground that it is a broad abstract question which nobody can understand or answer and is not evidence. The Court sustained the objection, to which ruling counsel for the defendants duly excepted.

Q. Can you derive from examination of the body  
 882 after death a certain indication or proof as to the cause of death? A. Yes, in almost all cases.

Q. Upon what do you base that opinion?

Objected to on the ground that it is immaterial and that it would take twenty-five years to answer it. The Court sustained the objection to which ruling the counsel for the defendants duly excepted.



Q. Do the conditions of the various organs of the human body present changes which indicate the cause and manner of death? A. Yes, and the discovery of indications is the purpose of making the autopsy. There are different symptoms attending diseases which are designated by the medical profession as "objective" and "subjective." Subjective symptoms are those which are told to the physician by the patient and concerning which the physician is to a greater or less extent dependent upon the statement of the patient. Objective symptoms are those which are seen by the physician for himself and are more or less completely independent of the statements of the patient. 883

Q. And which is the most important and satisfactory? A. Sometimes one and sometimes the other. There are certain objective symptoms which can not be feigned by the patient.

Q. Name some of those? A. Disturbances of the temperature and the pulse, and the results obtained by the thorough physical examination, thorough listening to the heart's sounds and by determining by auscultation and percussion the condition of the internal organs. 884

Q. Is morphia capable of producing feebleness of pulse? A. It is.

Q. You have spoken of cases of congestive chills; describe the symptoms in the patient? A. The last case I saw of congestive chill was in the person of a gentleman who was passing through Philadelphia, and was suddenly taken ill in a street car, forced to get out, was helped into some building; was there some three or four hours; at the time, according to his own statement afterwards, thought to be dead; he was brought to the University Hospital where I saw him myself at that time; he was in a condition of semi-unconsciousness, taking no notice of anything but capable of feebly answering questions when loudly spoken to, and aroused; and his voice was whispering and was so feeble that it could be 885

heard with difficulty ; his pulse was rapid and very small and very feeble ; the surface of the body was intensely cold, and with more or less sweating ; the temperature of the body was much below normal, that is natural temperature ; the man was put to bed and suitable treatment was instituted  
 886 and in the course of five or six hours the symptoms gradually passed off.

Congestive chills are only a very bad form of malarial or intermittent fever, and the basis of the symptoms, so to speak—the general outline—is that of an ordinary attack of intermittent fever. In the first stage there is an appearance of coldness, with some cases an actual lowering of the bodily temperature ; in other cases in the beginning a rising of temperature—the internal temperature, as tested by the thermometer. This condition of so-called chill lasts from twenty minutes to twenty hours, according to the circumstances of the case ;  
 887 it is then succeeded by the so-called hot stage of the fever, in which there is a very decided fever ; the temperature of the body rises very much, sometimes reaching  $105^{\circ}$ ,  $106^{\circ}$ ,  $107^{\circ}$  and even a greater degree of temperature ; there is thirst and headache and hot skin, and rapid and usually bounding pulse, sometimes nausea and sometimes various other disturbances. After this state of heat has lasted for a varying time, the third or sweating period occurs. The patient begins to sweat about the head and neck, and as the sweat develops the fever heat gradually falls, and the patient is covered finally with a profuse perspiration, and when  
 888 this ceases the individual paroxysm is over.

In congestive chill, so called, we have various alterations of this. The ordinary or typical congestive chill is the so-called algid form of the attack ; it consists in an increase in the intensity of the first stage of an intermittent fever. The symptoms of this chill are coldness of the surface, usually accompanied by internal coldness, sometimes

by internal rising of temperature, profound prostration and rapid, feeble pulse, excessive muscular weakness, more or less disturbance of the mental action, and finally, in bad cases, the well developed symptoms of collapse, the paroxysm very rarely lasting under five or six hours, and usually lasting many more hours, and sometimes over a whole 889 day.

There are other forms of this fever, if you wish them described. There is a rare form of this fever in which the disease attacks the brain. Then the symptoms are usually coldness, failure of pulse, but especially loss of all mental powers, with disturbance of the respiration. There is a third form of fever that I recall, a very rare form, in which the attack is chiefly connected with the alimentary canal ; here there is profound prostration. also excessive vomiting and discharge of watery or serous stools, resembling somewhat those of cholera, with symptoms of collapse. There is 890 another form sometimes seen, in which, along with the brain symptoms I have spoken of previously, there are convulsions. In all these forms the paroxysm lasts many hours.

Q. Are congestive chills following on ; are they concurrent with changes of temperature ? A. Yes, concurrent with it, and may be followed.

Q. Where does mucus come from in the body that in coughing is streaked with blood ? A. Usually it comes from the lungs ; it may come from the throat.

Q. What does the existence of nodules in the 891 lungs indicate ? A. Various things ; they may indicate cancer of the lungs ; hard, fibrous nodules indicate previous ulceration and destruction of the tissue of the lungs ; they are usually of the same character as cicatrixes or scars on the external sur-

face of the body ; it is a scar in the lungs and indicates a past destruction of the tissue.

Q. Do lacerations of the lungs generally produce hemorrhage or spitting of blood? A. Yes, the blood vessels of the lungs are excessively numerous, occupying in all parts of its tissue and being  
892 many of them very small and placed very close to one another.

Q. What are the symptoms of bronchitis which would be noticed by a person who had not any medical knowledge? A. Coughing and spitting or expectoration ; beyond this it depends how closely a person observes ; bronchitis is an inflammation of the lining of the membrane of the bronchial tube.

Q. What are the characteristics of blood from the lungs which would be perceived by an ordinary person ?

893 Objected to on the ground that it improperly calls for the conclusion of the witness in asking him to judge who an ordinary person is ; the Court sustained the objection, to which ruling counsel for the defendants duly excepted.

Q. What are the appearances of the blood from the lungs? A. Bright red, more or less frothy.

Q. Can blood of such bright character come from the finger? A. Yes ; that depends upon whether the artery is cut.

Q. Now, assuming the person has had a cold, with very frequent cough, spitting of mucus  
894 streaked with blood, spitting of considerable quantities of blood ; a year afterwards hard nodules of a scar-like or cicatricial character are found in the apex or upper part of the lungs on the post-mortem examination, is there any, and if any, what presumptive connection between the nodules and the previous cough, in your opinion ?

Objected to on the ground that it is

not competent to submit to a scientific gentleman, because it is not a matter of science what the presumptive connections are; the Court sustained the objection, to which ruling the counsel for defendants duly excepted.

895

Q. Assuming the facts as I have indicated in my previous question, in your opinion, is there any connection? A. Yes.

Q. What is the connection between the two?  
A. As I have already stated, the fibrous nodule in the lung is almost invariably the cicatrix of an old ulceration; ulceration of the lung is a common cause of hemorrhage of the lungs, and having, therefore, a history of the presence of the common cause of hemorrhage from the lung, and a history of the presence of the hemorrhage, the presumption is that the cause is—my opinion is—that the effect has followed from the cause, and the ulceration been productive of hemorrhage.

896

Q. Assume that a man who has enjoyed previous robust health, has been sick for five weeks, has had some headaches which have been called congestive chills, which have lasted one half hour each, and have not been followed by any fever or sweating stage; that during the sickness the man has had no departure from natural temperature; that upon a certain day he eats his dinner, goes out to the sitting room, attends to some business, has a bath, passes under the hands of the barber, is left in good condition, at about 9:30 P. M., is found dead at 11 o'clock, and at the subsequent autopsy the body shows no signs of violence, and the structural changes are liquidity of the blood, evidences of congestion of the lungs, with emphysema and oedema, the liver and spleen being healthy, could such a man, in your opinion, have died of congestive chills, or any other form of malarial poison?  
A. That man has not died with malarial poison.

897



Q. What do you mean by the terms emphysema and oedema used by me in my question? A. Emphysema is rupture of the air vesicles of the lungs so that many vesicles are thrown into one.

898 Q. Air cells? A. Yes. Oedema is the throwing out of the serus fluid from the blood into the tissue.

Q. Will you state then the facts upon which your opinion is based in such case? A. Length of the alleged chills, or rather the shortness of the alleged chills, the absence of the disturbance of the colorification, as to the temperature of the body, the suddenness of the death, the fact that after death not one of the characteristics, pathological changes, or lesions of intermittent malarial fever are found in the body, and the presence of organic changes in the body which intermittent fever is not capable of producing.

899 Q. What does the presence of bloody mucus in the bronchial tubes indicate, in your opinion? A. It is an indication of death from suffocation.

Q. What, in your opinion, do the ecchymosed spots upon the body indicate? A. It depends upon the character of the ecchymosed spots, their position and nature.

Q. What do the large number of ecchymose spots upon the back and arm indicate? A. They indicate especially, if confined to that region of the body, death from suffocation.

900 Q. What does the emptiness of the heart indicate? A. It indicates that the heart has emptied itself.

Q. In connection with the congested condition of the lungs and other organs, what does the emptiness of the heart indicate? A. It indicates that the patient died from some form of suffocation, and has had a very powerful heart which has continued very late in its action.

Q. What does the bursting of air cells in the lungs indicate? A. It indicates very violent efforts

at respiration when the respiration has been impeded.

Q. What does the intensity of the engorgement of the lungs connected with the clot in the brain indicate? A. It indicates it was from suffocation by something which has obstructed the circulation in the neck. 901

Q. A furrow, about the sides of the neck, nearly meeting in front and behind, about the size of the little finger, rounded at the bottom, the skin involved in the furrow dense and hard, with a surface like parchment, the furrows beginning in the front just above the larynx and extending upward and backward at an angle of nearly 45 degrees; can you state, in your judgment, what instrument or mechanical cause would produce such an impression in the neck? A. Such a furrow could only be made by rope or cord of some character, either before or just after death, applied with considerable force. 902

Q. In your judgment would there be any connection between the existence of such a furrow and a highly congested state of the lungs, and a clot in the membranes of the brain? A. The internal condition which you speak of is that of asphyxia. The furrow is the track of an instrument capable of producing asphyxia, and the probabilities are, therefore, that asphyxia has resulted from application of the instrument.

Q. From which of the organs of the body is death immediately produced? A. Death only results in two ways or through two organs—immediately results I should say from two organs—either through failure of the heart, or through failure of the lungs, to perform their duty, death is either from failure of circulation, or else from failure of respiration. 903

Q. What are the lesions or structural changes of sudden death from the heart, generally including deaths from violence? A. Wounds of the heart; grave injuries to the nervous system from cannon

balls ; heavy bodies falling, producing shock, and other forms of violence. Of sudden heart deaths not connected with external violence, there are occasional cases of localized diseases at the base of the brain forming the heart nerves : then we have  
 904 changes in the heart itself, diseases of the heart valves, diseases of the heart walls, either in the form of fatty degeneration or otherwise, and diseases of the coronal artery, which is the great artery which supplies the heart with food—that is, with blood.

Q. What are the lesions of sudden death ? You may state first in natural form of death, and, secondly, in death from asphyxia ? A. In the natural form of diseases the lesions might be a clot or hemorrhage into the small localized region at the base of the brain where the centers of the nerves of respiration arise. Thus we may have a  
 905 respiratory death from excessive violence, failure of respiration forming part of the shock ; those are the only cases I think of now. The lesions of the lung substance in asphyxia from natural causes are simply congestion ; the lesions of the lung substance from causes unnatural, that is, not due to diseases in the body, are congestion, emphysema and œdema, these are the common lesions of asphyxia, under some circumstances, one or more of them may be absent.

Q. What does emphysema or bursting of the air cells of the lungs indicate in the case of sudden death ? A. It indicates there has been a great effort on the part of the powerful respiratory muscles to drive the air out of the lungs, and that  
 906 then this effort has been resisted by some obstruction above the lungs, and that those portions of the lungs which were weak—that is, the exterior, superior and upper parts—and are not supported by the close adhesion of the tissue around them burst.

Q. What does congestion of the abdominal or-

gans, kidney and stomach, indicate? A. Death from asphyxia.

Q. What does the liquidity of the blood indicate in such cases? A. It indicates asphyxia, but is not peculiar to it.

Q. What do the sugillations indicate? A. If they are situated in the upper extremity, they are 907 *and are* indications of death from asphyxia.

Q. What do you mean by the term sugillations? A. I mean small spots, not broad and spread out, or large, of a black or blackish color, which are on the surface of the body, wherever they may be.

Q. How are they produced? A. By the rupture of the small veins; it forces out the blood from that vein or venu, which is highly carbonized.

Q. How? A. By the action of respiration. And the reason they are found only in cases of asphyxia, in the upper extremity, is because the blood is not driven into the lower extremities during the forced respiration, from the fact that in the veins which 908 run to the lower extremities are valves which resist the backward passage of the blood, whereas in the upper extremities these valves are very small or altogether wanting, and do in a way allow a backward current of blood to flow in an unnatural direction.

Q. What are the different forms of asphyxia and how do you distinguish them? A. The different forms of asphyxia are those forms which are connected with the evidence of mechanical violence to the neck and the forms in which no such violence is apparent. 909

Q. What distinction do you make between them? A. The distinction is to be confined to marks or absence of marks of violence on the neck.

Q. Is there any distinction to be observed in the internal organs? A. No; not if I understand the word "asphyxia" as you mean it.

Q. Is it possible for a man to hang himself in bed? A. It is.

Q. How long does it take a man to die in strangulation when there is no injury to the spinal cord?

A. I should say the usual time is from four to five minutes. There are cases in which death has been longer delayed, and cases in which it has apparently occurred earlier. It depends largely on the  
 910 perfection of the closure of the windpipe by a cord in front.

Q. In the case of asphyxia are there not violent efforts to draw air into the lungs as well as to expel it? A. Yes.

Q. I recite to you certain facts which I assume for the purpose of asking your judgment upon those facts, as a medical expert: You examined about fifty-eight hours after death, in the middle of November, the body of a man found dead at about 11 P. M., having been last seen alive one hour and a half before, and then apparently not in a con-  
 911 dition of apprehension of sudden death; you find it to be the body of an unusually large and powerful man, great muscular vigor, with a considerable development of firm fat, forty-one years of age; you find nothing unusual in the appearance of the face and the general surface of the skin, except the presence of small dark spots, indicating a little effusion of blood in the skin of the back and the back of the right arm; a furrow about the sides of the neck, nearly meeting in front and behind about the size of the little finger, rounded at the bottom, and the skin involved in the furrow dense and hard, and the surface like parchment, the furrow begin-  
 912 ning in front just above the larynx, extending upwards and backwards at an angle of forty-five degrees; the brain and membrane perfectly natural and healthy, except a clot of blood on the surface on one side of the head, the clot being evidently of very recent origin, but not sufficient to produce death; the lungs deeply congested with dark liquid blood, but presenting no evidence of inflammation; a few small fibrous nodules, and the bronchial tubes



and windpipe deeply congested and filled with bloody mucus; the heart and the blood vessels, including the valves of the heart and the vessels supplying the blood to the substance of the heart, absolutely healthy and natural in size, and in every other regard, excepting a slight unimportant thickening of some of the valves, the cavities containing a very small quantity of dark blood; the liver, spleen and kidneys absolutely natural and healthy, except that they, especially the kidneys, are deeply congested with blood, and of natural size and weight; a small quantity of undigested food in the stomach, the mucous membrane of the stomach and intestines congested, and a small area of apparent inflammation, about the size of a dollar, in the stomach—finding all the organs in the condition stated, and the furrow made as described above, what, in your opinion, was the immediate cause of death? A. It is not possible that the man could have died of anything else than strangulation by a cord. 913

*Cross-examination by Mr Smith :*

I will be 43 years of age the 13th day of January, 1884; my father's name is Horatio C. Wood; my grandfather's name was John Bacon, on my mother's side; I partially composed the preface to the last edition of the United States Dispensatory; the statements in that are true, to the best of my knowledge and belief; I think that work has about 2,000 pages—I don't remember exactly; it is a large book. I did not mean to be understood that I rewrote a third of that book; part of it was done by somebody else; the two-thirds were written jointly by myself, Prof. Saddler, and Prof. Remington; those gentlemen wrote under me; the last edition of that book was written by me this present year; everybody connected with it was subordinate to me. The Treatise on Therapeutics, all of which I 915

- wrote, contains something about death by asphyxia; no portion of that book is devoted to the symptoms developed by death from asphyxia; it contains, as I remember, 800 or 900 pages. "Brain Work and Over Work," all of which I wrote within the last three or four years, is a small
- 916 book of 100 pages, if I remember right. I also wrote a large quarto book, of about 250 pages, on the "Fresh Water Seaweeds of North America," published by the Smithsonian Institute; it contains about 300 or 400 colored illustrations; I drew them from under the microscope; I made the originals from which they were made. I have written a book on "Sunstroke"—a small book of a couple of hundred pages, all of it written by myself. I have written also a quarto book upon "Fever," published by the Smithsonian Institute, containing about a couple of hundred or three hundred pages
- 917 quarto; I wrote also a small book of a hundred pages on "Fever," also published by the Smithsonian Institute; that was written a number of years ago, 8 or 9. That did not treat of Congestive Chills or Asphyxia; the book on "Therapeutics" did, decidedly; I have written also a book on "Diphtheria," of about 100 pages—it is now just appearing; I have written a very large number of papers, a very large lot; I didn't understand that to be asked for, but I didn't know but what you meant papers as well as books; I have read the book of Job; I graduated at the Pennsylvania University, Medical Department; I know what institution in
- 918 Philadelphia is known by the common term of University of Philadelphia; I have never had any connection with it; I graduated in 1862 at the University of Pennsylvania and not at the Philadelphia University.

Q. Have you been retained or employed in this case to act in any other capacity than as a witness?

A. As an expert witness, no, sir.

Q. Why do you put in the word "expert." Is

it because you are to do something else than to give testimony? A. No, sir.

Q. When did that occur? A. I hardly know; I was first spoken to in this case in the latter part of May or early in June, 1883; I was spoken to by Dr. Austin Flint; I did not then have the understanding that I was to be employed in some capacity in this case; it did come to my knowledge that I was to be used or employed or render my services in any form or capacity on the trial of this case; that was early in June probably. 919

Q. By whom? A. I don't remember who the letter came from, possibly from Timothy Brosnan; I don't remember who was the individual who gave me that; my earliest interview upon that subject was with Dr. Austin Flint in my office, either very early in June or the last days of May; I don't remember which; his coming was by arrangement.

*My best recollection is very poor.*

Q. Then did he come there by arrangement to consider in any form or manner the merits of this case, or the testimony to be given? A. Well, there was no such arrangement on my part; he telegraphed me he would be at my office a certain time and to have certain other gentlemen meet him; I didn't know what it was to be about at all; when he came there he spoke to me upon the subject of this case; that was the purpose of the interview; the other gentlemen were Prof. Theo. Wormley, of the University of Pennsylvania; Prof. Robert Barthelow, of Jefferson College, and Dr. Isaac Ott, of Easton, Pennsylvania; those were all. 920

Q. Well, from that time to this have you devoted yourself, so far as it is in your power to informing yourself as to the various subjects that were likely to come under consideration? A. I have not in the slightest degree.

Q. Do you mean to have this jury understand that this testimony you have been giving here is without preparation and without making this sub- 921

ject a special study ? A. I mean to have this jury understand nothing of the sort ; quite the contrary.

922 Q. You gave a long answer here defining certain diseases, with very considerable fullness and minutia ; I wish to bring your attention particularly to the disease called congestive chills ; was that statement you made here a statement of your knowledge derived from experience—from actual experience or from reading of books ? A. That statement was a combination of my knowledge derived from hearing lectures, actual experience at the bedside, and wide reading of books in French, German and English ; I should say the actual experience of men was not science at all ; science is the result of the experience of men with the deductions drawn therefrom.

923 Q. Now, in the light of that definition, I wish you to state when the first case occurred of congestive chill that came under your observation and was within your knowledge ? A. I can't do it, sir ; I have been practicing medicine very actively.

Q. Now, the question is, when, on the face of this earth, did the first case occur of congestive chill that fell under your actual observation, and was a congestive chill to your knowledge ? A. To my knowledge, the first case I remember was about, I should suppose, about eight or nine years ago, perhaps ten years ago, and perhaps longer.

924 Q. You began by saying you did not want to give the names of your patients, have you any objection giving the name of that person ? A. I had rather not.

Q. I want to know from you whether you remember the name ? A. Yes, sir ; it was my own father, I should probably remember the name.

Q. When was the next case of congestive chill ? A. The next case of absolute congestive chill that I remember was two or three years ago.

Q. And have you any objections to giving the name of that unfortunate subject ? A. I have no

objections to saying he is one of the Judges of the United States Court at Washington, I had rather not give his name ; he—

Q. He was a Judge of the United States Court at Washington—of the High Court or the District Court? A. I don't know the difference in the Courts.

925

Q. I want you to say when any other case of congestive chill ever came under your actual observation, besides these two, your father and this Judge of the United States Court? A. The only other case that I remember was a case which occurred near Burlington, New Jersey, I saw within a year or two, but I hardly know whether it would be called a congestive chill or not ; congestive chill is merely a name for an intense condition of a disease ; it is impossible to say in any case whether this case crosses the line, or whether it is a little below the line of intensity ; I should say this case might fairly be called a congestive chill.

926

Q. Can you give the name of the man? A. I have forgotten his name, he is one of the officers of the Lehigh Valley Railroad.

Q. Do these three cases, your father, and this Judge of the Supreme Court of the United States, the New Jersey man connected with the Lehigh Road, are these all the cases that ever came within your knowledge of which you can speak from personal knowledge that had congestive chill? A. They are the only cases I have a distinct personal recollection of ; there are some of which I have an impression, other than these three ; I am under the opinion I have seen other cases.

927

Q. Can you, speaking from memory, give any other cases? A. I told you I could not.

Q. Now determine in your own mind the fact or the conclusion, did the inference, did the case, did the suspicion, or whatever it is, that these three men had congestive chills come from what you had read in the books? A. What I had read in the



books, and what I had seen from lighter cases, and what I had heard in the lecture room ; cases of malarial fever of the same origin and same nature as congestive chill which were not severe enough to be fairly entitled to the name of congestive chill.

928 Q. Then there is a dividing line, as I understand you, in reference to this disease, separating the known fixed established disease of congestive chill —there is a dividing line ? A. There is no fixed dividing line, it is an arbitrary line drawn for the convenience of description.

Q. And on one side of the line are the more marked and intense cases, I suppose ? A. Yes.

Q. And on the other side of the line are those that have some, more or less, of these characteristics yet not sufficiently marked to apply to the species assigned to the first class mentioned ? A. It is not a species.

929 Q. The sort of clan, or clique ? A. It is neither a clique nor a clan. Put your questions in straightforward English. I think that the questions put by you are not in intelligible English. I think the last one was not. A question on science, whether it was a clique or a clan, it has no sense in it. I did not understand your question.

Q. You have spoken of there being a dividing line in determining the existence of this infirmity which is designated as congestive chill ; on the one side of that line you say are the cases which have the marked, plain symptoms, and on the other, is it true, that there are that class of cases which do not present all or any as plain, respecting the marked plain symptoms, but possess them in a greater or less degree ? A. Yes.

930

Q. Is it true that symptoms of most diseases, except, perhaps, in some very marked or striking degree, are different in almost every patient ? A. I can't understand your questions.

Q. Is it true that people are found sometimes

having marked symptoms of some disease—some known disease—and yet varying and different in almost every respect as to the other details of symptoms? A. Yes; but all diseases—

Q. I beg your pardon. Just answer my question?

A. I decline to answer that question, unless I can give an answer that has a definite meaning to it. 931  
The question is so framed that it is capable of two meanings.

Q. Well, suppose you were called to witness a case of a man who had died of strangulation, do you think it would follow as a matter of course that the strangulation was caused by choking or pinching the neck? A. It depends upon the mark on the neck.

Q. Can't you answer that question in any other way? A. No; I cannot.

Q. Do you recognize the fact that a man may die from asphyxia without any mark upon his neck? 932  
A. Yes, certainly so.

Q. Anything that produces the sudden ceasing or cessation of breath, anything that produces the sudden cessation of breath, would that be a death by strangulation? A. No. "Anything" is not a death.

Q. Where you see a red, unnatural red, dark spot on the skin, quite dark, like dark blood, like the color of dark blood, that had made its appearance under the scarf skin, that would be caused, in your judgment, by the rupture of some minute artery, I understand you? A. I said nothing of the sort.

Q. Well, would that be caused, as you understand it, by the rupture of some minute artery? A. 933  
Probably not.

Q. If the discoloration did not come from the artery, where did it come from? A. The discoloration would come from the blood in the tissues.

Q. And ordinarily would you expect that discoloration to have been caused by any external violence? A. I might or might not.

Q. The finding of a pimple under the skin of that color—what would it indicate? A. That there was a pimple under the skin.

Q. You are quite sure about that? A. Yes; that is my opinion.

Q. What I want, is, what produced it—would  
934 there be anything in the abstract fact of finding this red pimple there—would there be anything by which to determine what produced it? A. No; not to a red pimple; probably a disease of the skin produced it.

Q. Would there be anything by which you could determine it? A. Yes; I would know it was due to a disease of the skin.

Q. I want to know whether, if you should find a dozen red pimples say, varying in size from the size of the head of a pin to the size of a pea, would there be anything, or is there anything which enables an expert, with the absence of any other fact, to form  
935 an opinion as to the origin of those pimples? A. Yes.

Q. Are they not common upon the skin of people? A. Yes.

Q. And frequently found upon the skin of people who have not yet died, or experienced asphyxia? A. Yes.

Q. Then the mere existence of such pimples alone would not be a circumstance? A. No, the existence of pimples in the skin is no indication of the cause of death.

I arrived here a week ago yesterday; I have been  
936 engaged here in connection with this case in another respect than in awaiting my examination as a witness; I have been aiding in the preparation of the defense to some extent; I have not been taking a part in the arrangement of the case outside of the Court House; I have attended consultations and discussions, I hardly think there has been any comparison of views; I have not taken part in all the arrangements of the trial in Court—not part of the

management; I have suggested; I have sat by the counsel for the defense in Court; I have suggested subjects to be brought forward; I don't think my questions were put to a witness; I have suggested subjects that were intended to be made a matter of inquiry of the witnesses; I can't say how many subjects.

937

Q. How many doctors have been here acting conjointly with you in the particulars to which the question refers—the suggestion of questions or subjects in open Court? A. I don't think of anybody so far as I know except one other person.

I have not personally had any experience upon the subject of the hanging of a person in bed; I have knowledge upon that subject acquired from reading Casper's Hand Book, Taylor's Practice of Jurisprudence, Woodman & Tiddy's Work on Medical Jurisprudence, I think Wharton & Stilé's Work on Medical Jurisprudence and Beck's Medical Jurisprudence and probably some other books. One or two of those books I am not sure whether they have anything on that special subject. I have read them all and various other books in connections with the subject of hanging and asphyxia.

938

Q. The question was from what source you derived your knowledge as to the possibility, I think was the word of the persons being able to hang themselves in bed? A. From reading.

Q. Are you able to state where you read that? A. In Taylor's Jurisprudence; he treats upon that subject. Woodman & Tiddy, I think speak of the capability of a man hanging himself in bed.

939

Q. What I want is whether you recall any scientific statement in any book on such a subject? A. I recall it distinctly in Taylor's. I know of a medical book by Woodman & Tiddy, I quoted it; that treats of the subject of Medical Jurisprudence. Medical Jurisprudence is that portion of the science of medicine which relates to legal questions.

Q. And is Beck, to which I have just referred;

good authority? A. Yes, it is a standard work, but it has mistakes in it; it is not always perfect.

Q. Do you know any book that has not, excepting yours? A. I wouldn't make that exception; they all have mistakes in them.

940 Q. Is it true that most of these cases got in these books where they are, are not within the author's own knowledge, but are gathered from the unverified statements of others? A. Yes.

*Re-direct-examination by Mr. Russell:*

Q. Did you make a microscopic investigation of a part of the heart that was handed to you by Dr. B. F. Sherman? A. I did of one slide, that portion which I examined was the size of an ordinary microscopic specimen--I suppose a few lines square.

941 Q. What was the result of your examination? A. The muscular fibre was normal in character. Striation was perfect in character and there was nothing in the specimens that betokened other than a perfectly healthy heart.

Q. In case of such a furrow as has been described in my question and to which you have alluded in your answers, what, in your judgment would be the duration of the furrow? A. It certainly would remain for a long time, provided the body was in such condition as not to undergo rapid decomposition.

942 Q. What are the conditions of the stomach after strangulation? A. Intense congestion, which has been found to affect the piloric end of the stomach, and has been described as resembling the results produced by the injection of irritants.

Q. You have been interrogated about pimples in connection with these spots that have been referred to that were seen on the back and arm; will you please state or distinguish between ordinary pimples and ecchymosed spots? A. An ecchymosed spot is a flat, not elevated discoloration of greater



or less size without any change in the structure of the part, save only an effusion of blood. A pimple is the result of a local inflammation; a local inflammation is connected with more or less elevation and alteration of the structure of the skin and may be red or it may be of some other color.

Q. Could scars of an old ulceration on top of the lungs be discovered by physical or medical examination during life? A. I don't think any physician could do so. 943

Q. What conditions are the kidneys usually found in after death by strangulation? A. They are usually very much congested.

Q. What are the characteristic lesions in cases of death by malarial fever, and are they readily observable? A. In severe malarial fever there is always a very decided destruction of the red corpuscles of the blood and the production of a large amount of blackish pigment matter, and this pigment matter is especially prone to collect in the liver and spleen and these organs are found discolored thereby. It may collect in other organs, especially in the brain and cause a grayish or slatey color of the brain; there is almost always also a very distinguishable enlargement of the spleen. 944

Q. Could there be a case of congestive or malarial fever running four or five weeks without such evidence appearing on the autopsy? A. Not in my opinion.

Q. What are the effects of taking calomel and gelseminum, on the pulse? A. The direct effect of taking calomel is nothing; if the calomel has been taken in large doses enough to produce disturbance of the alimentary canal, it would have a tendency to lower the force of the circulation; gelseminum in large doses has a distinct effect in lowering the force of the pulse. 945

Q. What is the effect of large and not distinctively poisonous doses of Fowler's solution of

Arsenic? A. To irritate the stomach and produce pain and vomiting.

Q. You have been asked as to the degree of authority to be attached to certain authors. Is Taylor's work on Medical Jurisprudence considered a standard work? A. Yes. It treats of death by  
946 asphyxia.

Q. (Book handed to witness.) And you are asked in that connection as to cases of hanging in bed, from reading and observation, will you please refer me in Taylor's Principles of Medical Jurisprudence to those cases to which you refer? A. I was not asked that question, if I remembered exactly in that form. I was asked as to cases showing the possibility of hanging in bed, and I can show you cases of that character; this is the American edition of the book, and I am not familiar with that edition of it. On page 57 I find cases,  
947 also on page 56; the case on page 49 was a mixed case of death, although the hanging is stated to be the cause.

Q. Can you refer to any other cases in that book?

A. There are cases on pages 56 and 57; that is all I see at present.

Q. Take the case of the Prince of Condé, one of the cases to which you refer? A. That was the first case, so far as my knowledge goes, on record, which calls attention to the fact that a person might be hung or might commit suicide without the feet being removed from the ground; unless my memory is incorrect; in that case the Prince was  
948 not either in a kneeling, lying or sitting position.

*Re-cross-examination by Mr. Smith:*

Q. Are you able to recall a case of dying that you witnessed where the death was caused by strangulation? A. Not where I witnessed the immediate death; no.

Q. Or are you able to recall a case where the

death of the subject, to which you have referred, died from strangulation of which you had personal knowledge? A. The "death of the subject died from strangulation," you say; I don't know what you mean by the question.

Q. Do you mean deliberately to say you don't understand the question? A. I don't understand the question; there is no sense in the question—that is what I mean to say deliberately; how a death can die from strangulation I can't conceive. 949

Q. Do you say you don't know how a death can be caused by strangulation? A. I do know that very plainly.

Q. Now do you know of a case where the death was from strangulation, the death being within your personal knowledge? A. If seeing the death at the time of death, is necessary for my personal knowledge, I do not; I am a little doubtful what "personal knowledge" means in the sense in which you used it. 950

Q. Did you ever see a dead body of a human being that you knew died from strangulation? A. I have; I do not know the names; a woman that hanged herself, or a man that hanged himself in the wards—

Q. Well, was it a man or a woman? A. It was a man, who hanged himself in the wards of the Philadelphia Infirmary or Almshouse; that was early last June; I made an examination of the person.

Q. And is that the extent of your personal knowledge derived from the examination of persons you knew had died from asphyxia? A. No, not at all; there are others; I made an autopsy some time ago on the body of a woman who died from asphyxia in Kensington, in the northern part of Philadelphia; probably seven or eight years ago; I don't know the name; nobody associated with me in that autopsy, and I cannot give any means by which we can find out further informa- 951

tion upon the subject ; Kensington is a section of the city ; I cannot give the number or identify the building by which we can trace the statement ; I cannot tell the street it was in.

Q. Now we have two cases; are there any others?

A. I don't remember any other at this sitting.

952 Q. What further knowledge you have is derived from books ? A. Partially.

Q. Is there any further knowledge that is derived from the actual examination of persons known to you to have died from strangulation ?

A. None that I remember.

Q. Would you expect to find as a matter of science, the condition of the stomach to be the same in all persons dying from strangulation? A. No.

Q. You have said something about the kidney and the condition of the kidney; did you examine the kidney in either of these cases to which you have referred? A. Yes; I don't remember the Farr case; I did in the case of the woman.

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Q. And then so far as the condition of the kidney would be found after a case of death by strangulation, the examination of the kidney of this single female is the only personal knowledge you have? A. Yes.

Q. Now, have you ever examined the other organs, except the kidney? A. Yes; in the two cases I speak of, or in the last case; I examined all thoroughly.

Q. Have you ever used the commodity called  
954 gelseminum? A. I have as a remedy; I have studied the effects carefully.

Q. Is there any case that you can now recall where you have knowledge of the effects of gelseminum derived from a post-mortem examination of a body by dissection? A. I never made one and never witnessed one.

Q. You have been asked upon your examination to describe malarial fever, is there a disease of a

human system that is known by that as a name?

A. Yes; a series of conditions or affections.

Q. And are there many instances in common experience of fevers produced by malaria, that do not fall within these classifications? A. There are no such diseases.

Q. So that if a man gets fever which is superinduced in any degree by malaria, he must have malarial fever, is that the idea? A. Yes. 955

Q. And if ever that is a feature tending to produce the sickness, it would fall within that classification—if it was a fever and a malaria tended to produce it, then you would call it malarial fever?

A. If it was produced by malaria I would call it malarial fever.

Q. Even if it was typhoid fever? A. It would not be typhoid if it was produced by malaria.

Q. Do you mean to say as a gentleman of science, that malaria may not produce typhoid fever? A. That is exactly what I mean to say. 956

Q. Or typhus fever? A. No.

Q. Malaria may not produce it? A. No.

Q. You speak of Fowler's solution being an irritant and irritating the stomach and producing pain; I suppose because this solution may produce pain it don't follow by any means, that it may not come from a great many other causes; you don't mean to exclude all other things and say that the pain can only be produced by Fowler's solution, do you? A. No, of course not.

Q. And any indigestive foreign commodity introduced into the stomach in any considerable quantity would tend to produce irritation? A. Certainly, and nausea. 957

Q. And indigestion and sometimes vomiting? A. Yes.

Q. What does the word "ecchymose" mean? A. It means a localized effusion of blood into a tissue; a black and blue spot may be an ecchymosis, and



it may be something else, and an ecchymosis may not be a black and blue spot.

Q. So, ordinarily a black and blue spot is what is known as ecchymosis, or understood to be? A. No; it is not the general idea as understood by the profession.

958 Q. This is produced by the effusion of blood into the tissue? A. Yes.

Q. The tissue is the lean flesh? A. It is the general flesh of the body.

Q. And the little blood vessels being broken, and the blood running into them out of the tissue shines through the skin and produced the discoloration, you say? A. It don't shine; it produces discoloration.

Q. It is made obvious through the skin that is not so thick as to obscure the view? A. Yes, that is about it.

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*By Mr. Russell:*

Q. Would external violence produce a large amount of ecchymosed spots, such as has been described? A. No.

Q. Those proceed from internal causes? A. Yes.

Q. Of what color would the liver and spleen be in the case of malarial fever of four or five weeks duration where death occurs? A. The color of the spleen would be very dark. Perhaps I can best describe it by the word "slaty." The color of the  
950 liver is usually described as bronze color; it is a mixture of the blackish and slate color, of the pigment that is deposited, and the natural reddish brown of the liver.

*By Mr. Smith:*

Q. You used the word "pigment." I suppose you mean color by that word, don't you? A. Not in the sense I use it, it don't mean color.

Q. Don't the word mean color? A. Not in the technical, medical sense. It does so when used in common parlance.

Q. In what sense do you use it? A. As a name for the peculiar black granular matter which is found in the blood and tissues in malarial fever, and is the result of the breaking down or disintegration of the red corpuscles of the blood. 961

Q. You talk about what you saw there upon the disinterment of the body; have you ever seen any other body; you didn't see Dwight's body, I believe; have you ever seen anybody after five months' burial that you knew had already been buried five months? A. I never saw a body that I myself saw put into the ground, but I have seen bodies that have been buried about 75 years, taken out of the ground, or asserted to have been buried that long in old graveyards.

Q. Did you think that that was what I enquired for? Do you think that is a fair answer to my question? A. I think it was. 962

Q. These "old customers" that had been buried 75 years, you didn't look at the skin to get the color of the liver? A. I looked at the skin.

Q. Where did you see any such subjects that had been buried 75 years whose skin you examined? A. I saw a subject which was said to have been buried 75 years, which is now in a case in the museum of the University of Pennsylvania, medical department.

Q. That is a case not within your knowledge? A. I didn't see it buried 75 years ago. 963

Q. All you know about it is, it is down there in the museum? A. Yes.

Q. I want to know whether you have ever seen the remains of a body that had been buried long and disinterred, this being a matter within your knowledge? A. I have seen such remains.

Q. Do you know as you sit there now, what would be the condition of the remains of a body

five months after death? A. I know it would vary indefinitely according to the circumstances of burial.

964 Q. Do you claim to have any such experience as will enable you to state as an expert what would be the effect of five months' burial upon the body of a dead man? A. Nothing, except by my reading.

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BENJAMIN F. SHERMAN, called as a witness on behalf of the defendants and sworn, testified as follows:

*Examined by Mr. Russell:*

965 I reside at Ogdensburg, St. Lawrence County, in this State; I am a physician and surgeon; have practiced at that profession nearly 43 years—only lacks a month or two of it; I was in the office of my brothers, who did a large business and all the surgery in that section for years; I graduated at the Albany Medical College, since which time I have been actively engaged in my profession; I was coroner nine years; I did the examining and dissecting for the incoming coroners for six years, and have done the same thing for other coroners; I am a member of all the medical societies and the American Medical Association; I have been an officer of the New York State Medical Society; a member of 966 the Northern New York, the St. Lawrence, and our local societies; I have been president of three or four of them; I have had chemical experience in the course of my medical experience; I have used the microscope almost daily in my office, and also for public purposes; in the course of my practice and experience I have personally known of cases of suicide by strangulation—a dozen or fifteen cases;

I don't know as I could give just the number—not less than a dozen.

Q. Were any of those cases where the deceased committed the act of suicide in bed? A. Not of my personal knowledge; one of them was lying down, but not in bed.

Q. How many dissections on post-mortem examinations have you made or assisted at in cases of suicide by strangulation? A. None. 967

Q. Any autopsies? A. None.

Q. How many autopsies have you made or assisted in generally? A. Hundreds would be as near as I could tell. I was present at the coroner's inquest on the body of Walton Dwight, in April, 1879; at that time I took from the body portions of the heart for microscopic examination, and gave some slides to Dr. Horatio C. Wood, of Philadelphia, for his examination; I made a microscopic examination myself of the portions which I took, with the result of finding every part of this portion of the heart healthy in every respect; I made 150 slides and examinations—as many as that. Referring to the post-mortem examination, April, 1879, when I reached the cemetery the casket had been raised from the grave, and I think was opened there, but I am not positive; it commenced raining, and it was taken a little distance from the cemetery to a barn; the body was then taken out and the casket weighed and the length of the body measured and laid upon the table, or an extemporized table; the body weighed—taking the weight of the casket—177½ pounds; I am quite confident that is correct; I think I will state it without my notes; the height was six feet one inch and fifteen-sixteenths of an inch; I have seen my notes within a day or two, and that makes me so positive; when the body was laid upon the table I called the attention of my colleagues and the coroner, and the coroner's jury whom I knew to be present, to a deep furrow in the neck, and I put my finger in it as I called 968 969

attention to it; I stood upon the right side of the body, and this furrow was on the right side the broadest, but not so deep; corresponding furrows were upon the two sides, but narrower and deeper upon the left side commencing in the neighborhood of the larynx and extending  
970 back at an angle in the neighborhood of forty-five degrees, and I couldn't see that the points came together; if they had done so the throat had been dissected and I couldn't see, and I don't think they came together on the back of the neck; then after noting the appearance of the body the abdomen was reopened; it had been once opened, and the brain, lungs and the viscera and the thorax and abdomen were put loosely into the cavity of the abdomen; some portion of the lungs I think had been taken away, but the lungs were there; I will not say it had; Dr. Swinburne took the lungs out and weighed them; I can't tell what they weighed. I took  
971 a portion of one of the bronchial tubes to my boarding house, that is to the Spaulding Cottage, and examined what was contained in the bronchial tubes under the microscope. The heart and kidneys were taken out and examined, and I especially examined the heart by eye and handling, and it was in a remarkably good state of preservation. The muscles were hard and sound, and I cut from it this piece, about two inches by two, and put it in a small bottle I had with me for that purpose of methylated spirits, that is, wood alcohol, and took it home with me after sealing it. We attempted,  
972 at the suggestion of Dr. Swinburne, to take a cast of the neck, and failed entirely. We got nothing that approached the appearance of the neck. I would go back if you will permit me to one point when I called attention to the furrow in the neck, Dr. D. S. Burr said "and here is another furrow." After examining the viscera and attempting to take a cast of the neck and failing—we failed on account of the softening of the tissue and



the length of the time it had been buried, and the heat that is generated in the hardening of the plaster; it was an entire failure. The body was turned over and the spinal cord was exposed, and found so soft that no preparation or study could be made of it. The brain was also found softened in the abdominal cavity. The lungs were in a pretty good 973 state of preservation. The lungs were hard and in a better state of preservation than any of the other organs. The body was turned back again upon the face and the left thigh was examined. It was examined; we examined that wound to see if the bone was broken, and that was pretty much all that was done. And at that time the Coroner desired to know if everybody had done and seen all they wanted to.

The texture of the skin within this furrow had a leathery feel. It had what Casper calls "mummified." Most authors say "parchment-like," and what would be understood by those present as 974 "leathery." I have seen, in the course of my experience, other cases where death had occurred by a pressure of rope or cord around the neck.

Q. Were these appearances the same as in those cases? A. Yes, sir.

Q. What were the appearances, in the cases you have in your mind, of the character of the furrow and the skin? A. They varied very much in the different cases.

I am familiar, by personal observation of cases and from reading, with the character and texture of the skin in the case of a furrow, produced by a 975 cord that effected death by strangulation.

Q. Describe, if you please, those appearances in a death caused by strangulation? A. They vary in proportion to the force that is used, and somewhat to the instrument that is used. But it is an indentation or furrow, usually; Taylor and Casper say—I have got to describe them and make a distinc-

tion whether there is force, as criminal hanging, or whether it is suicide.

Q. Go on in relation to suicidal strangulation?

976 A. In a great majority of cases, I can name certainly four, where there was a distinct furrow, the bottom of the furrow parchment-like with no discoloration, while in some of those there was a slight purplish tinge around the border of the furrow. These cases I saw were all suicidal, and there was no great violence done to the parts, to the tissue. I never saw a case of legal strangulation where there was great violence used. These cases were all with little or no violence done to the tissues. Some had a discoloration, but not to amount to ecchymosis, and not amounting to a deposit of blood within the tissue which constitutes ecchymosis.

Q. Do you mean outside, or within the furrow?

977 A. Sometimes both. Sometimes at the bottom, a little in some places—and sometimes on the border, but oftener on the border of the furrow.

Q. What of these characteristics, did you observe, if any, that were in the furrow on this body examined in April, 1879; A. I found the “parchment-like” feel at the bottom or base of the furrow.

Q. Was this furrow one such as, in your judgment, could be produced by natural causes without the application of force? A. No, sir.

978 Q. Were you present in the sitting room, and bedroom in which Mr. Dwight was said to have died? A. I was. I saw the room and the stove, and the bedstead. I have caused to be prepared a diagram or drawing of those rooms, as I saw them.

(Paper handed witness.) That is the diagram to which I refer. It is essentially correct. It may not be in exact proportion, but it is substantially correct.

The diagram referred to was introduced in evidence. It was marked Exhibit No. 84.

I think the front door of the Spaulding House and this cottage look to the west. That room (indicating) is Dwight's sitting room; it is marked "Dwight's sitting room." That is the stove, marked "stove." This room is Dwight's bedroom—it is so marked; those lines there are the bed—it is so marked, leaving this space between the foot of the bed and the wall, and so the door shut around onto the bed, as it is sketched there. That circle, there, is the stairway, and that (indicating) is the hallway. This room (indicating) was occupied by Mrs. Dwight and Mrs. Owen, until 11 or 11:30 P. M.; and that (indicating) is the room occupied by them after that. The front yard is marked, in front of the hall door. 979

I also caused a representation of the bedstead to be made. (Paper handed witness.) That is the drawing; it is essentially correct. That (indicating) is the headboard of the bed only. The scrolls may not be correct, but those prominent scrolls are correct, those two on each side of the centre. 980

The counsel for the defendants introduced the diagram referred to by the witness, in evidence. It was marked Exhibit No. 85.

Q. (*By a Juror.*) How thick was the scroll work on the top of this headboard? A. It was made of two inch stuff, and the top of the headboard was four feet or more above the bed.

Q. Assuming the following to be facts: You examine, about fifty-eight hours after death, in the middle of the month of November, the body of a man found dead at about 11 P. M., having been last seen alive one hour and a half before, and then not in a condition that would lead to an apprehension of sudden death; you find the body to be the body of a man unusually large and powerful, of great muscular vigor, with considerable development of firm fat, and forty-one years of age; you find noth- 981

ing unusual in the appearance of the face and the general surface of the skin, excepting the presence of small dark spots, indicating little effusions of blood in the skin of the back, and in the skin of the back of the right arm ; you find a furrow by the sides of the neck, nearly meeting in front and  
982 behind, about the size of the little finger, rounded at the bottom, and the skin involved in the furrow, dense and hard, and the surface like parchment ; the furrow begins in front, just above the larynx, and extends upward and backward at an angle of nearly forty-five degrees. The brain, and each membrane, perfectly natural and healthy, excepting a clot of blood on the surface of one side, near the top of the head—this clot being, evidently, of very recent origin, and not sufficient in itself to produce death. The lungs deeply congested with dark liquid blood, but representing no evidence of inflammation. A few small fibrous nodules on  
983 the lungs, and the bronchial tubes and wind-pipe deeply congested and filled with bloody mucus. The heart and blood vessels, including the valves of the heart and the vessels supplying blood to the substance of the heart, absolutely healthy and natural in size and in every other regard, except a slight and unimportant thickening of some of the valves ; and the cavities of the heart containing a very small quantity of dark blood ; the liver, spleen and kidneys absolutely natural and healthy, except that they, especially the kidneys, are deeply congested with blood, and of  
984 natural size and weight ; a small quantity of undigested food in the stomach ; the mucous membrane of the stomach and intestines congested and a small area of apparent inflammation about the size of a dollar in the stomach. With all these organs in the condition stated above, and the furrow in the neck, as described above, what, in your opinion, was the immediate cause of death ? A. Asphyxia, from hanging.

*Cross-examination by Mr. Smith :*

Q. Do you know who composed this last question or any part of it? A. No, sir, but I suppose the counsel on the other side did.

Q. The question is whether you know who composed any part of that question? A. I think Dr. Flint, but I am not sure he did. 985

Q. Anybody else? A. No, sir, and I don't know that he did.

Q. Where did you first hear of it? A. I heard the main part of it last evening, in a private house from Dr. Flint; no one else was present.

Q. Was it read to you with a view or for the purpose, so far as you know, of revising it or getting your answer? A. Probably; I don't know of any other reason for its being read to me. That was the first time the question had been presented to me. I came to town a week ago last Monday, in a snow storm; I came because Mr. Magone sent word to me through his wife that he wanted me. 986

Q. And have you been devoting yourself, since you have been here, in any degree to the preparation of this defence or the testimony relating to it? A. No.

Q. When was your attention first called to the fact that there was a controversy growing out of the insurance of Walton Dwight? A. I think in March, 1879—that there was likely to be a controversy. This was at Ogdensburg, and by Mr. Magone, who resides there.

Q. He was, as you understood, the counsel for some of the insurance companies? A. I don't know anything about it. 987

My first active connection with this case was my starting to Binghamton; I think it was in March 1879. I went at the instance of Mr. Magone. I don't know any thing about my going in the service of the insurance companies; I went there at Mr. Magone's request, the same as I go to see his



wife at his request. I went then to investigate this case—to make inquiry as to the death of Dwight.

Q. And do you say you did not know in whose service you were acting? A. I did after I got there, sir. I was acting in Mr. Magone's service  
988 all the time.

Q. Did you know that he was acting in the interest and for these insurance companies, or any of them? A. Indirectly,—that is as near as I can get at it. Mr. Magone was the one I was acting for. I got there Monday night and the dissection was made Tuesday, and I left there Saturday night. I am referring to the examination at the cemetery. I was acting for Mr. Magone.

Q. Do you know whether you were acting for the insurance companies? A. I suppose I was. I knew Mr. Magone was. I understood that at the time this body was then exhumed, that it had been  
989 buried for several months. The body was covered with white mold when we first took it out of the casket.

Q. Do you remember it was so far decomposed that parts would fall off like the teeth falling out?

A. No, I don't remember anything of the kind. The teeth did not fall out.

Q. Did the teeth come out without being drawn?

A. No, sir, they came out when they stuck in the wax that I put into the mouth to take a wax cast of the mouth.

Q. When you took the wax out the teeth came  
990 too? A. Some of them, two or three of them only; they did not fall out—they were pulled out—they came out with the wax. The specimen that I afterwards used under the microscope was a part of the heart.

Q. Are you sure whether it was the heart or the kidney? A. Yes, I am perfectly sure.

Q. And was this piece of the heart in amongst a lot of scraps of the parts of the body of Dwight

that had been put in a bulk in the stomach and sewed up? A. The viscera of the thorax and abdomen and the brain were put in the cavity of the abdomen, loosely, the heart among the rest, as I have testified. By viscera, I mean the lungs and the heart and the liver and the kidneys and the stomach.

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Q. Do you mean the contents of the body? A. Not always.

Q. The brain, you say, was in there? A. That is not a viscera. They were in this mass, all mixed up together; there was bloody fluid.

Q. The serum? A. That is bloody fluid. I didn't see any fecal matter.

Q. Dr. Swinburne said they were filled? A. The probability is they were empty before they were put in there. They were pretty likely to be before they examined the inside of the intestines. I took a piece of this heart, two inches by two, as near as I can remember, and I prepared a great number of slides. I have them all to use in this case.

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Q. What did you say on your direct-examination about the slide? A. He asked if I prepared a slide that Dr. Wood saw.

Q. Will you please to describe the thing to which you refer, and which you referred to Dr. Wood, which you characterized on your direct-examination as a slide? A. It is a piece of clear, perfect glass, three inches long, one inch wide; upon this is put the preparation, mounted in different material, as our wisdom directs us, and over that is put a very thin, round glass called the cover glass; that is cemented to it, and that is called a slide.

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Q. Now, in the case of this slide, which you prepared and showed to Dr. Wood, about how large a piece of this piece of the heart of Col. Dwight, that you have spoken of, did you place on it? A. I think the particular slide he looked at—I have two in my possession that has his mark on them with a

diamond. As near as I can tell you, they are—well, say the thousandth of an inch thick, and perhaps less, and one-fourth to one-eighth of an inch in diameter. That is as near as I can describe it. These vary in size and vary in thickness, as we want them to, with the machine we cut them with.

994 Q. As I understand you, the portion of Dwight's heart you have got on that slide was about the thousandth of an inch thick, and about the size of a small shirt button? A. Hardly as large as that.

Q. It must have been about the millionth of a grain weight? A. It would weigh more than that. I can't tell you how much it would weigh, never having weighed one; it was of very slight weight; I think it would take more than a million of them to make a heart. I put that on this little piece of glass, and that fixed up as I described was a slide. I put that under a microscope and looked at it through the magnifying glasses.

995 Q. And what you saw of Colonel Dwight's body with the aid of the microscope was limited to this part of the body which you have now here just described? A. No; I had put 150 and more pieces in slides, taking them from all parts of this section of 2 inches by 2. I had as many as 150 slides and have got 50 of them here; of this 150, some were larger than others—perhaps not much difference in them in size. I looked at the whole 150 and more than that; I can't tell you how many.

Q. Did the magnifying glass disclose the fibre?

A. Yes, sir. It disclosed a healthy fibre, a fibre  
996 peculiar to the heart.

Q. Do you mean to have the jury understand that by such a test with the microscope by any man on earth, that he is so skilled as to tell with any degree of certainty, whether the fibre was healthy or not? A. Yes, sir.

Q. Did you ever see the fibre of the heart of a man who died with the small-pox? A. No; nor that of a man who had died of malarial chill.

Q. Did you ever see the fibre of the heart of a man that died when you didn't know what the trouble was? A. Yes.

Q. Did you ever see the fibre of the heart of a man who committed suicide? A. I don't know that I have; I don't think I have.

Q. Did you ever see, after death, the fibre of the heart of a man that was healthy so as to know what a healthy fibre was? A. Yes, sir. 997

Q. The fibre of the heart of a man you knew had a healthy heart? A. Yes.

Q. Have you seen such cases? A. Yes.

Q. How do you know a man has a healthy heart before he dies? A. We can tell pretty well by examining him. We can't tell positively, but we can tell pretty well.

Q. You have heard of Dr. Simms, who died a few years ago? A. Yes, sir; I knew him well; he was an intimate friend of mine; he was a prominent physician. 998

Q. He went to bed healthy and died before morning? A. Yes.

Q. Have you any way by which you can describe to this jury, whether the fibre of a heart is healthy fiber, as you call it? A. Yes; I have a way.

Q. Is there a difference in appearance in the heart of a man who has died with a cause from that of one dead without a cause? A. Men don't die without a cause. I can't answer that question.

Q. Is there a difference of the fibre where men died from different causes? A. No, sir. Not unless the heart is affected. 999

Q. Assume the heart is affected? A. There is a difference in the fibre if there is degeneration of the fibre; the fibre of the heart—a man might die of a disease of the heart.

Q. How large is this fiber? How large apparently to the eye was the fiber in this case when you got it under the operation of this microscope? A. It depends upon how strong a power you use. In

the power I use the fiber is like a very fine silk, as it seems to the eye it is about the size of a very fine fiber of silk ; you can raise the power to almost any size.

1000 Q. How many times did that magnify ? A. It is a half inch, I think about two hundred and some ; I wouldn't tell you positively.

Q. I want it so we can all understand it. Do you mean, if you thus put under this glass this fiber it appeared to the eye about the size of the fine fiber of silk ? A. Yes, and then it was magnified about two hundred times. I would not say that positively, but I think that is about the power of a half inch, with an "A" eye-piece about two hundred times larger than the real thing I look at ; it depends altogether upon the length of your tube, and the eye piece you are using, and a good many of these points.

1001 Q. Doesn't it magnify two hundred each way from the center ? A. About two hundred diameters ; I wouldn't be positive.

Q. Two hundred diameters means two hundred each way from the center ? A. Yes.

Q. You think from what you saw of this little thing there, whatever it was, was natural ? A. Yes, I know it was healthy tissue ; healthy hard tissue, hard muscle.

Q. Did you ever see any that was not healthy ?

A. Yes ; I made no other investigation by the microscope in relation to this case.

1002 Q. Only this little piece of heart ? A. Yes, that is all. I have practiced chemistry more or less for a good many years. I can't tell you how many years, always. I couldn't tell how many doctors we had at this inquest, a good many ; I think they all had an opportunity to see and feel and to know.

Q. Their attention repeatedly called to make all the inquiry and investigation they wanted, wasn't it ? A. Yes.



Q. Did you go back from there to the Spaulding House? A. Yes. I had a microscope there, and examined some of the fluid that came from the inside of the bronchial tubes.

Q. Where did you make that examination? A. It was in the room that Mrs. Owen said she occupied after twelve o'clock, the room at the end of the hall; I had there some of the fluid that I scraped from the inside of the bronchi; that was the fluid I used there; I am quite sure I did not make a slide of that; I looked at it and put it on a slide. 1003

Q. How many slides? A. I don't know as I did more than one. I looked at it, two or three of the doctors looked at it; they came in to look at it.

Q. After that was there anything else put on the slide, or any other slide made, or anything else looked at? A. I don't know but there was. I think one of the doctors put on some of the mucus from his mouth or nose, one or the other, in which there were mucus cells and epithelial cells; they are the cells that cover the inside of the mucous membrane; I think that some of the doctors examined it; I didn't examine it; I saw them. 1004

Q. Am I correct in understanding you that you have never made any examination of the condition of any dead body where you knew that the death was produced by asphyxia? A. No, you didn't understand me to say anything of the kind; I have not said anything of the kind; if I had it would not be true, but I haven't said it.

Q. Have you made examinations of the dead body of any person or persons that you knew to have died from asphyxia? A. Yes; I haven't examined any one that had a name; they were infants; they were so young that they hadn't a name; these were not cases of deaths of infants occurring in delivery; they died from asphyxia subsequently produced. 1005

Q. Do you know of any other persons except infants? A. No.

Q. How many of such infants were there? A. I couldn't tell you, but certainly five or six.

Q. Babes that had been choked to death? A. Yes; cases of infanticide.

1006 Q. You have been examined on oath already on this subject, haven't you? A. Yes; at the coroner's inquest, before the coroner's jury; I have lately read that testimony; I have read it since I have been here; it is not an accurate copy, there are a great many errors in it; I was alone when I read it over; I said that there were a great many errors; they may have been errors on the part of the printer or the stenographer; these maps are not made on a scale; I drew a rough sketch, and got a lady here in town to draw them since I came here; I don't know where the rough draft is, perhaps in the lady's possession.

1007 Q. This draft of the bedstead, as it is called, is only a draft of the upper outer side of the head-board? A. Inner side of the head-board.

Q. Where is the rough sketch now? A. I don't know; I handed it to the lady I wanted to draw that; that was yesterday or day before; for all I know the lady still has it.

Q. When did you make the sketch? A. Then, from memory; I can't tell you at whose instance; I made a sketch of the bedstead at my instance and nobody else's instance; some one asked me if I could give a diagram of the ground floor of the cottage; I did so.

1008 Q. Had you ever made one before this week? A. No; there was a sketch and a woodcut of that bedstead by a correspondent of the "Herald" at that time in April, and published in the "Herald."

Q. Did you make any measurements? A. No.

Q. This sketch is a mere picture as near as you could get it from memory? A. Yes, from memory.

*Re-direct-examination by Mr. Russell:*

Q. The errors in the printed book to which you refer are the errors either of the stenographer or of the printer? A. Yes; in representing what was said.

Q. You were asked by the counsel in regard to opportunity to know as to what was going on and to investigate; were you allowed to have any participation whatever in that examination? A. I did have some; I assisted Dr. Burr to some extent; the only cutting I did was in examining the spine; it was very hard work, and he did part of it and I did part of it, to relieve him in sawing bones to get at the spinal cord; that is the only part of the dissection I did; the examination of witnesses was conducted by the coroner and the coroner's jury only. 1009

Q. All these specimens of the heart that you took remained in your possession under lock and key after you got home until you brought them here? A. Yes; they have never been out of my possession for a moment. 1010

Q. You are positive that the ones you gave to Dr. Wood were those? A. Yes; they have never been out of my possession.

*Re-cross-examination by Mr. Smith:*

Q. Isn't it a fact that you talked more on that inquest than all the other men, doctors and all, put together? A. I don't know whether I did or not; I didn't measure it. 1011

Q. Isn't it a fact that your testimony covered about fifty printed pages? A. I don't know, sir. I have never looked to see.

Q. Isn't it a fact you were questioned by at least half a dozen different doctors? A. I was on the stand a great while; there were seven doctors, and each of them had a book before him and all

the Binghamton lawyers were handing in questions, I couldn't tell how long it was, but it was a great while I know, I don't know how many pages it covers.

1012 Q. Can you name a single Binghamton lawyer who handed in questions except Daniel Richards, who was a lawyer on the other side? A. No, I can't name any of them but I was told they were lawyers; I can't tell you who told me.

Q. Was it Magone who told you? A. No.

Q. You had a chance to free your mind fully, didn't you? A. I answered the questions.

Q. Were you interfered with in any wise which prevented you from saying all you wanted to to that jury? A. I answered the questions. I was not interfered with. They didn't interfere with me in answering the questions.

1013 Q. Did you say all you wanted to there? A. I did; I generally do.

Q. And were questions repeatedly put that if there was any one who wanted to ask anything there was an opportunity to do it? A. No. There was no opportunity for anybody to ask questions except the coroner and the jury.

Q. Didn't you ask questions? A. No, I didn't.

Q. The doctors asked questions? A. No, only the jury. The doctors on the jury asked questions—a great many of them.

1014 Q. Do you say there was not an inquiry made that any one who had any suggestions to make in furthering the investigation could make it? A. No, there was no such inquiry made on that inquest.

Q. Were not repeated questions written and handed in to examine by? A. No, not to my knowledge.

Q. Were any such? A. I saw people handing in questions to the coroner who I was told were lawyers. I was a stranger in Binghamton and they were strangers to me. There were questions put;

they were apparently the questions handed in, but I don't know whether they were or not.

*By Mr. Russell :*

Q. This jury and the coroner were all Bing hamton doctors, weren't they? A. Yes.

Q. Do you know of a single instance where a single person, representing the insurance companies or in any way connected with them, was allowed to propound a question in any form? A. Yes, sir. My opinion and belief is that no one did. I don't know of any one. 1015

*By Mr. Smith :*

Q. Do you know that any one was disallowed? A. Yes. The coroner announced at the opening of the inquest that no one would be permitted to ask questions except the coroner and the jury. Of course no one would propose after that. 1016

Q. Do you know? A. I know of no one proposing a question excepting what questions were handed in on paper as I tell you.

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NAT B. FREEMAN, recalled on behalf of the defendants, further testified as follows :

*Examined by Mr. Larocque :*

I was present at the coroner's inquest held in April, 1879, upon the body of Walton Dwight ; I was so near to the body that I touched it ; I examined the neck of that body on that occasion, when my attention was called to the marks upon the body. I found on the neck a furrow or indentation on both sides ; I put my finger into that furrow, the index finger of right hand ; the furrow was deep enough for my finger to go partially into it, but not entirely into it. 1017

Q. What was the feeling or appearance of the



skin at the bottom of the furrow at that time? A. I don't know that I could describe that as an expert, but it appeared hard. The feeling was a hard feeling; its appearance was similar to old leather—a dark brown. It was different in shade—the bottom of the furrow was from the skin around it—it was darker.

*Cross-examined by Mr. Smith:*

I had laid my hand on a dead body before, but not while I was an insurance agent, to my recollection. I have handled a great many dead bodies. I was a soldier in the United States Army; I helped bury the bodies.

Q. What business was it that you were in, when it was a part of your business to put your hand upon the bare parts of dead bodies? A. As a soldier in the United States Army.

1019 Q. As a soldier in the United States Army was it any part of your business to feel of the bare body? A. I didn't do it for feeling, I was compelled to do it. The clothes were not always taken off, but almost uniformly, and especially if we thought well of a friend, we would bathe the body and dress it.

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ELISHA H. BRIDGES, called as a witness on behalf of the defendants, testified as follows:

1020 *Examined by Mr. Russell:*

I reside at Ogdensburgh; am a physician and surgeon of nineteen years' standing; during that time I have practiced my profession at Ogdensburgh. I am a graduate of Bellevue Medical College, located in New-York City. During the course of the practice of my profession I have had occasion to attend to or participate in—I should

think—fifty post-mortems or autopsies. My practice has embraced generally all types and forms of diseases. Within my medical experience and reading I have known of cases of suicide by strangulation—two cases within my own knowledge. My reading extends over a good many cases.

I was called upon to go to Binghamton to view 1021  
the body of Walton Dwight in April, 1879, at the coroner's inquest. I arrived there April 22d. I staid in Binghamton, I think, about four days—perhaps five.

Q. State what you saw at the post-mortem in regard to the body of Col. Dwight, without stating the proceedings in regard to taking the testimony?

A. I saw the body of a large, muscular man that weighed, without the coffin, 177 pounds, covered with mold; a newspaper adhering to the front part of the body that had been laid over it; the body had been opened, and the contents of the chest and abdomen had been examined and thrown together 1022  
in the cavity of the abdomen. This cavity was re-opened while we were there. Before opening it I examined the exterior of the body, as I told you—the mold and the newspaper adhering—and observed that the scarf-skin could be removed with the finger. I noticed the furrow upon the neck—upon both sides of the neck—from the upper margin of the larynx extending around at about an angle of forty-five degrees. The furrow was rounded at the bottom about one-eighth to about a quarter of an inch thick, I should judge, and a quarter to a half an inch broad. The lower or bottom part of the furrow or groove was rounded so it fitted the convex surface of my little finger, that I passed through on each side. The base of the groove was hard, and had this appearance that has been described—a parchment look. We examined the tissues of the lungs and kidney and the heart. Most of the organs were softened, with the exception of the muscular substance of the heart itself. That was somewhat 1023

softened in parts, perhaps, but most of it was firm, hard and natural in its look and feel. That is all I think of now. I examined a portion of the heart both with the naked eye and with the microscope. I found the heart tissues perfectly normal, the muscular tissues perfectly healthy. It had that appearance of a healthy heart ; it was firm, there was no appearance of fat upon it ; and it had no oily feel.

Q. You may assume the following conditions ; you examine about fifty-eight hours after death in the middle of the month of November the body of a man that was found dead at about 11 P. M., having been last seen alive one hour and a half before, and then not in a condition that would lead to an apprehension of a sudden death ; you find the body to be that of a man unusually large and powerful, of great muscular vigor, with considerable development of firm fat, and forty-one years of age ; you find nothing unusual in the appearance of the face, or the general surface of the skin, excepting the presence of small dark spots indicating little effusions of blood in the skin of the back, and of the right arm ; you find a furrow by the sides of the neck nearly meeting in front and behind, about the size of the little finger, rounded at the bottom and the skin involved in the furrow dense and hard, and the surface like parchment ; the furrow begins in front just above the larynx, and extends upward and backward at an angle of nearly forty-five degrees. The brain and membranes perfectly natural and healthy, excepting a clot of blood on the surface on one side near the top of the head, this clot being evidently of very recent origin, and not sufficient in itself to produce death. The lungs deeply congested with dark liquid blood, but presenting no evidence of inflammation. A few small fibrous nodules on the lungs ; and the bronchial tubes and windpipe deeply congested and filled with bloody mucus. The heart and blood vessels including the

valves of the heart, and the vessels supplying the blood to the substance of the heart absolutely healthy in size and in every other regard, except a slight and unimportant thickening of some of the valves; and the cavities of the heart containing a very small quantity of blood; the liver, spleen and kidneys absolutely natural and healthy, except that they, especially the kidneys, are deeply congested with blood, and of natural size and weight; a small quantity of undigested food in the stomach; the mucous membrane of the stomach and intestines congested, and a small area of inflammation about the size of a dollar in the stomach; and with all the organs in the condition stated above, and the furrow in the neck as described above, what, in your opinion, was the immediate cause of death? A. Asphyxia from hanging. 1027

Q. Need that hanging be necessarily a suspension by the neck with the feet away from the floor? A. No. 1028

Q. Does your medical knowledge and reading, doctor, extend to cases of malarious fever and congestive chills? A. Yes.

Q. What are the distinctive symptoms and conditions in cases of death by a malarious fever or by congestive chills? A. The victim usually has one or more ordinary attacks of intermittent fever preceding the congestive chill; the congestive chill is characterized by coldness of the entire body; a shrivelled look to the hands and skin of the body, an anxious countenance and pale face, a trembling of the entire body, which lasts from two to six hours; the pulse is in this condition feeble and rapid. After the chill is passed comes the reaction, the surface gradually regaining its healthy temperature and becoming warmer than natural, and followed usually, but not always, with sweating—the patients may sweat during the cold stage, the first stage, these subjects usually have a straw colored countenance showing the severity of the poison. 1029

*apparent*

There may be delirium and in some cases there is coma—stupidity. Then there is a period of relief for one or two days, and a recurrence of this same paroxysm takes place. That is all I think of now.

Q. Is it possible that a patient can die of malarious fever accompanied with congestive chills of the  
 1030 duration of five or six weeks—of about five weeks—without his internal organs giving evidence of it?  
 A. It is not possible.

Q. What would be the color of the liver and spleen in such case as I have stated? A. The liver is bronzed and dark colored, and so also the spleen and generally the brain.

Q. And could he have had such a sickness without change of temperature of the body? A. He could not.

*Cross-examination by Mr. Smith :*

1031 I have been a doctor nineteen years. The spleen is an organ situated in the abdominal cavity. It is a vascular organ. It contains many blood vessels and nerves and tissues. I can't tell you what its office is. I do not know. I have examined one. In its normal condition it weighs from a half pound to twelve or thirteen ounces. I have seen one of a person who died by asphyxia; I can't tell you the name, it was at Ogdensburg about four years ago; I saw it five or six hours after death from asphyxia, caused by drowning; I didn't see the drowning. It was a child. That is not the only instance in which  
 1032 I have seen the spleen of a human being that died by asphyxia. Another instance was in the case of another child, eight or ten years ago, at Ogdensburg. Those are all. The last child died from drowning.

Q. Now, those are the only two cases in which you have ever seen the spleen of a human being dead of asphyxia so as to know the color? A. Yes, so far as I remember, so far as I know.



Q. Have you any other actual knowledge except those two children? A. No knowledge from observation, but from reading; the rest of my knowledge comes from what I have read.

Q. And whether they are light red or dark red or bronze in other cases or not, you don't know?

A. Yes.

1033

Q. How do you know if you never saw them? A. From reading; I couldn't know about those I didn't see.

Q. Do you think you could distinguish the spleen of a man from that of another creature? A. Yes, I think I could; perhaps I could not; I don't know whether I could or not; I am not familiar with the anatomy of the hog. It is larger in some animals and smaller in others.

Q. By what means do you discover which was in the human being and which was not? A. By the size. The spleen, I think is a little larger in infants in proportion to the size of the body than in adults.

1034

I was asked to go to this autopsy by Mr. Magone; I understood that I was acting in the employ of the insurance companies.

Q. Have you been much in their service as a witness? A. I have not been much or any more than in this case. I was employed to go from my home in Ogdensburg to Binghamton by Mr. Magone. I went there and witnessed this autopsy with the understanding I presumed that I was to be used as a witness. I have been here since a week ago last Monday night.

1035

Q. Have you been engaged since in preparing this case and in preparing to give this testimony? A. I don't think I have. I have read books.

Q. And compared views with the other doctors? A. Some, but not very much; I had some ideas of them, but have not been in consultation with them. I have attended meetings of the doctors but made no suggestions. I have not heard of this question

(referring to the hypothetical question previously put) before to-day.

Q. Not a suggestion of it? A. No.

Q. Did you know what was in it? A. I can't repeat it.

1036 Q. Do you remember whether there was anything in the question about mucus? A. Yes; I do not state with confidence from memory. I have been examined before as a witness in this matter before the coroner's jury, and I have seen my testimony in the printed book upon that subject. I have read it over twice; I have not read it over to-day; I read it last just before I left home, and a little here.

Q. Did you find it correct there? A. Yes, nearly so.

Q. Have you sworn to some things here that you didn't then.

1037 Objected as incompetent. The Court overruled the objection, to which ruling counsel for the defendants duly excepted.

A. A good many things.

Q. Did you have a full opportunity there to give all the testimony you wanted to? A. I think so.

*Re-direct-examination by Mr. Russell:*

Q. Where there interrogatories propounded to you on that occasion as to congestive chills? A.  
1038 No.

*Re-cross-examination by Mr. Smith:*

I have never had a case of congestive chills, and never saw one in my life. I have had a good many case where sickness was produced by malaria, cases of malarial fever.

Q. What opinion have you given in regard to

congestive chills is a mere recital of what you have read in the books? A. Yes, and what I have heard from others.

*By Mr. Russell :*

Q. You were asked if you had a full opportunity to state what you knew at the coroner's inquest, did you state anything except as you were interrogated by questions propounded by the coroner or members of the jury? A. No. 1039

Q. You volunteered nothing? A. No.

Q. And the additional things you testified to on this occasion were answers to additional questions now asked you? A. Yes, exactly.

JAMES B. PIERSON, called as a witness on behalf of the defendants, and sworn, testified as follows: 1040

*Examined by Mr. Larocque :*

I reside at Montclair, New Jersey; I am Vice-President of the Mutual Benefit Life Insurance Company of Newark; I have occupied that position since about the early part of 1876.

Q. (Paper handed witness.) I show you a letter purporting to be addressed by Walton Dwight to "Lewis C. Grover, Esq., President M. B. L. Insurance Co., Newark," dated Windsor, N. Y., September 23d, 1878. Stamped, "Received Sept. 24th, 1878," by the stamp of the company. Are you able to identify that letter as a letter received by your company? A. I am; it was received from Walton Dwight; it was in answer to a letter of September 19th addressed by Mr. Grover to Mr. Dwight; that letter is referred to in it; I have a copy of that letter of September 19th, in my letter 1041

book. (Paper handed witness.) That is a copy of it.

The counsel for the defendants introduced in evidence the copy letter of September 19th, 1878, of Lewis C. Grover, addressed to Walton Dwight ; it was marked Exhibit 93.

1042 Also the reply of Mr. Dwight to the letter last read. It was marked Exhibit 94.

Another letter was addressed by the company or by Mr. Grover, the president, and sent to Walton Dwight under date of October 7th, 1878 ; it was sent by mail—not registered. We again wrote a letter on October 22d, and it was mailed, as was our custom, in the early morning of the 23d, with our correspondence, and we had it registered.

Q. (Paper handed witness.) Look at the paper now shown you purporting to be a receipt for a registered letter, and see if that is the receipt you received for the letter referred to ? A. Yes, and it  
1043 bears the signature of Mr. Dwight, or by somebody in his name. That letter enclosed a copy of a letter which had been forwarded to Mr. Dwight on the 7th of October and which had not been registered.

The counsel for the defendants introduced in evidence the receipt for registered letter signed "Walton Dwight, by Neri Pine." It was marked Exhibit 95.

The counsel for the defendants introduced in evidence copy of the letter of October 7th, 1878, being the enclosure accompanying letter of October  
1044 22d, referred to by the witness. It was marked Exhibit 96.

Also the letter of October 22d, 1878, referred to by the witness. It was marked Exhibit 97.

No answer was received to either the letter of October 7th, or that of the 22d.

GEORGE W. THOMPSON, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside in Boston ; am in the insurance business; 1045  
I am a superintendent of agencies of the New England Mutual Life Insurance Company ; have occupied that position since January, 1877. Prior to October 4th, 1878, the New England Mutual Life Insurance Company had issued a policy on the life of Walton Dwight. The application for that policy came to the company through the Union Mutual through Winship of Albany.

In October, 1878, I went to Albany on behalf of the New England Mutual in connection with this policy. I saw there Mr. Winship and Mr. Batchelder on this subject. I subsequently went to Binghamton on the same business. I was in Binghamton on Tuesday, the eighth, I think it was, of October of 1878. I got there on Monday, the 7th. I saw Colonel Dwight on that visit, but not in Binghamton. I tried to find him in Binghamton. I looked for him at the Spaulding House, not finding him there I went up to Windsor, in Broome County, a short distance from Binghamton. 1046

Q. To whose house did you go? A. I was told his father-in-law's, I do not remember the name.

Q. Was it Dusenbury? A. That sounds like it. 1047  
Mr. Spaulding of the Spaulding House carried me there—he took me there in his own buggy. I found Colonel Dwight there.

Q. State, if you please, what you did and said and what Colonel Dwight said in connection with this policy on the occasion of this visit? A. I had a letter in my possession from the president of the company directed to Walton Dwight, of which I



have a copy here. (Produced.) Colonel Dwight came into the room and I asked him if he was the gentleman, and he said yes, he was. I told him I had this letter from the president of our company, and delivered the letter to him, and he read it. Mr. Stevens, the writer, was president of the  
 1048 company at that time, and for many years previous.

The counsel for the defendants then introduced in evidence a copy of the letter referred to by the witness. It was marked Exhibit No. 98.

Q. Now, upon presenting that letter to Colonel Dwight, and his reading it, what further took place between you? A. He declined to give me the policy. I tendered him the amount of the cash he had paid, in greenbacks, and the three quarterly notes he had signed for the balance of  
 1049 the premiums. He said to me that it was his intention to carry upwards of \$200,000 of insurance; that our policy had been taken out fairly, and the questions had been fully answered, that he considered that his head was good to him for \$10,000 to \$15,000 a year, and that it was his intention after his death that he should leave the same amount for his family, that he could provide for them during his life. The question of his health came up. He stated to me that he was in perfect health, that he was taking a vacation in Windsor, and enjoying himself hunting and fishing, preparatory to his winter's work in Chicago.  
 1050 He called attention to his physique, and asked me if I thought he was a consumptive looking man. When the question of his having spit blood came up, he told me he had never spit a particle of blood more than the prick of a toothpick. I made three demands upon him for his policy and tendered the amount of the premium, each of which he declined, and he said "I acknowledge

you are doing your duty, but I must respectfully decline to give up the policy." I was with him perhaps half an hour. I told him there was a falsification in his application, according to the ideas of the president of the company, and it was in answer to that that he said he had never spit any more blood than came from the prick of a tooth pick. It was spoken of in general terms that there was a falsification in his application, and he asked in what respect. I told him there was no mention of blood spitting. I did not point out any other alleged falsification in the application. What I said was limited to the spitting of blood; to that he made the reply I have stated. 1051

*Cross-examined by Mr. Newton :*

When he asked me whether or no he looked like a consumptive, or as though he had the consumption, I told him I thought he was a pretty good looking man—he was indeed. 1052

Q. Not much look of consumption about him?  
A. No, he was a man of good physique and large, I should say over six feet tall; I judged him a pretty heavy man as he sat down on my hat and crushed it. I can't say that he was as healthy a looking man as I ever saw. I am not a medical examiner. You ask me something beyond my knowledge.

*Re-direct-examination by Mr. Larocque :*

Q. So far as you were able to observe, was there the slightest appearance of disease in Col. Dwight's countenance on the 8th of October? A. Not so far as I could observe. 1053

*Re-cross-examination by Mr. Newton :*

Q. Did you notice his voice? A. Not particularly; it was apparently strong. He called my attention to the breadth of his chest.

Q. Was it a broad one? A. It struck me so.

Q. And full? A. Yes, sir; he said he was in the habit of bathing in cold water every morning during the year.

1054

GEORGE W. AVERY, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Russell :*

I reside in Norwich; am a physician and surgeon; have been such since the 22d day of January, 1850. I pursued the study of medicine for four years from 1846 to 1850, and attended two courses of medical lectures at Albany, graduated 22d  
 1055 February, 1850, and have been in practice of medicine and surgery from that time to the present at Rochester, and three years in the service of the United States in the army—the balance of the time at this place. It was nineteen years the 8th day of last March that I came to Norwich to reside. During that time I have been Coroner of the County of Chenango, have held that office nine years, and am the present Coroner. In the course of my professional experience I have had several cases of suicide by hanging, I think eight. I performed an autopsy on only one. I assisted in only one case of the eight.

1056 Q. In your judgment, in the case of a person who had not presented any variations from the natural temperature of the body for four weeks preceding death, could such person during such time have had congestive chill? A. I should say not.

A. Have you ever seen a case of congestive chills yourself? A. Yes; in Rochester.

Q. Assuming that a patient is taking gelseminum, Fowler's solution, calomel and morphine, what

would be the effect of those medicines on the heart and the heart's action ? A. It would be to enfeeble its action.

Q. In a person having a history of distinct bleeding from the lungs and spitting of blood some years before his death, and who, on examination after death presented a cicatrix and small fibrous nodules at the apex of one lung, what would be your opinion as to whether the cicatrix and fibrous nodules were the remains of old tuberculous deposits, being the true cause of the bleeding from the lungs and the spitting of blood ? A. That would be my opinion if they were found on post-mortem. 1057

Q. After the lapse of years would it be possible to detect the presence of such a cicatrix and such fibrous nodules as I have described by a physical examination of the chest during life ? A. I think it would be impossible.

Q. Can you tell me, from your own experience and reading combined, as to about how much pressure of weight it would be necessary to arrest respiration so as to cause death ? A. Less than quarter of the weight of the body. 1058

Q. You may assume the following conditions : You examine about fifty-eight hours after death, in the month of November, the body of a man who was found dead at about 11 P. M., having been last seen alive one hour and a half before, and then not in a condition that would lead to an apprehension of a sudden death ; you find the body to be the body of a man unusually large and powerful, of great muscular vigor, with considerable development of firm fat, and forty-one years of age ; you find nothing unusual in the appearance of the face and the general surface of the skin, excepting the presence of small dark spots, indicating little effusions of blood in the skin of the back, and of the back of the right arm ; you find a furrow by the sides of the neck, nearly meeting in front and behind, about the size of the little finger, rounded at the bottom, and the skin 1059

- involved in the furrow, dense and hard, and the surface like parchment ; the furrow begins in front, just above the larynx, and extends upward and backward at an angle of nearly forty-five degrees ; the brain and membrane perfectly natural and healthy, excepting a clot of blood on the surface on one side, near the top of the head, this clot being evidently of very recent origin, and not sufficient in itself to produce death ; the lungs deeply congested with dark liquid blood, but presenting no evidence of inflammation ; a few small fibrous nodules on the lungs, and the bronchial tubes and windpipe deeply congested and filled with bloody mucus ; the heart and blood vessels, including the valves of the heart and the vessels supplying blood to the substance of the heart, absolutely healthy in size and in every other regard, except a slight and unimportant thickening of some of the valves ;
- 1060
- 1061 and the cavities of the heart containing a very small quantity of dark blood ; the liver, spleen and kidneys absolutely natural and healthy, except that they, especially the kidneys, are deeply congested with blood and of natural size and weight ; a small quantity of undigested food in the stomach ; the mucous membrane of the stomach and intestine congested, and a small area of apparent inflammation about the size of a dollar in the stomach ; and with all the organs in the condition stated above, and the furrow in the neck described above, what, in your opinion, was the immediate cause of death ? A. My opinion would be he died of asphyxia.
- 1062

Q. How produced ? A. By some instrument encircling his neck—a cord or rope.

*Cross-examination by Mr. Newton :*

I saw a case of congestive chills ; I was not the doctor in attendance ; the person died ; there was no post-mortem examination made.



Q. Is that all the knowledge you have of congestive chills? A. My own personal knowledge.

Q. Then of your own knowledge you don't know what the effect of a congestive chill would be at all? A. What do you mean?

Q. Of your own knowledge? A. No.

Q. When did you first begin to study this Dwight case? A. I never have studied it. 1063

Q. Were you with the doctors the other afternoon here; the assemblage of doctors studying the case? A. Yes; that Saturday afternoon; I invited in some doctors at the request of Dr. Austin Flint, Jr., at Mr. Marquis's residence; I invited three, I think, from Norwich and elsewhere.

Q. When did you first hear this long question read? A. Here in Court.

Q. Did you hear part of it before? A. I think I heard a portion of it before; I don't know who that was read by. 1064

Q. You said you thought such person, dying that way, died of strangulation? A. Yes.

Q. That is, cutting the wind off the lungs? A. Partially or entirely.

Q. You would think from that that in some way the wind was cut off so that they couldn't breathe? A. Yes, from the appearance.

Q. That is the usual way people die, isn't it; having their breath stopped? A. They usually die when their breath stops, yes.

Q. It comes from a great variety of ways, I suppose? A. Yes, and a great variety of causes.

Q. You have seen other cases of strangulation besides those you have mentioned? A. Yes; it depends upon what you call "strangulation." 1065

Q. You have seen other cases of strangulation besides with a rope? A. Yes.

Q. Great variety of ways of strangulation, isn't there? A. No; not a great variety.

Q. Anything that stops the wind from the lungs

would produce a strangulation? A. Yes; and very speedy death; that is asphyxia.

Q. You would think from reading this that this man died from asphyxia? A. I think he did.

Q. Now you said you had an autopsy in a case; now, do you recollect the name of the person? A. 1066 Yes; Silas Brooks; that was the 20th day of last April.

Q. He died of asphyxia? A. Why, it was not entirely asphyxia.

Q. Did the autopsy show a case of asphyxia? A. To a certain extent, yes.

Q. The stomach was full of laudanum, wasn't it? A. Yes.

Q. That is the only case you have yourself examined? A. Yes.

Q. All the rest you rely on what you have heard as to congestive chills and asphyxia except these two? A. Yes, what I have heard or read; those 1067 are the only ones that came under my own personal observation.

*Re-direct-examination by Mr. Russell:*

Q. About this case of congestive chills you speak of, you say you observed it yourself, and observed the symptoms? A. Yes.

Q. So you can speak of those symptoms? A. Yes; there was only one; this patient died in the congestive stage, cold stage; I saw him a few minutes after death; I saw the patient living for about six hours before death.

Q. These other cases of strangulation are cases 1068 in which you saw the body? A. Yes, I saw the bodies; several of them I cut down.

Q. How many of them? A. Three or four of them, I recollect, while still hanging; I was acting in my capacity of coroner.

*Re-cross-examination by Mr. Newton:*

Q. This case of congestive chills you spoke of,

you only saw him during that congestion? A. Yes; and during the chill he died.

Q. From the cold stage? A. Yes.

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CHARLES H. PORTER, recalled on behalf of the defendants, further testifies as follows :

*Examined Mr. Russell :*

Q. You may assume the following conditions : You examine about fifty-eight hours after death in the middle of the month of November the body of a man who was found dead about 11 P. M., having been last seen alive one hour and a half before, and then not in a condition that would lead to an apprehension of a sudden death. You find the body to be the body of a man unusually large and powerful, of great muscular vigor with considerable development of firm fat, and 41 years of age ; you find nothing unusual in the appearance of the face and the general surface of the skin excepting the presence of small dark spots indicating little effusions of blood in the skin of the back, and of the back of the right arm ; you find a furrow by the sides of the neck nearly meeting in front and behind, about the size of the little finger, rounded at the bottom and the skin involved in the furrow dense and hard, and the surface like parchment ; the furrow begins in front just above the larynx and extends upward and backward at an angle of nearly 45 degrees. The brain and membrane perfectly natural and healthy, excepting a clot of blood on the surface on one side near the top of the head, this clot being evidently of very recent origin, and not sufficient in itself to produce death. The lungs deeply congested with dark liquid blood but presenting no evidence of inflammation. A few

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small fibrous nodules on the lungs, and the bronchial tubes and wind pipe deeply congested and filled with bloody mucus. The heart and blood vessels including the valves of the heart and the vessels supplying blood to the substance of the heart absolutely healthy in size and every other regard  
 1072 except a slight and unimportant thickening of some of the valves; and the cavities of the heart containing a very small quantity of dark blood. The liver, spleen and kidneys absolutely natural and healthy, except that they, especially the kidneys, are deeply congested with blood and of natural size and weight; a small quantity of undigested food in the stomach. The mucous membrane of the stomach and intestines congested, and a small area of apparent inflammation about the size of a dollar in the stomach; and with all the organs in the condition stated above and the furrow in the neck as described above—what in your  
 1073 opinion was the immediate cause of death? A. In my opinion the immediate cause of death was asphyxia—mechanical asphyxia—and from having it stated that there were furrows or grooves about the neck of the character described, in my opinion the cause of death was by strangulation—hanging.

Q. Are you able to state, from the knowledge acquired by you in your medical studies, the amount of pressure that would be requisite to produce death by strangulation? A. Not definitely.

Q. Can you from such medical studies state an amount of pressure that would be sufficient to produce death from that cause? A. I couldn't state  
 1074 definitely in pounds—in weight. I have a general idea of it, but not a particular idea, I could not give you a very close or definite statement.

Q. Could you give it within a range of 20 or 30 pounds? A. I would say a few pounds.

*Cross-examined by Mr. Smith :*

Q. In making this statement of "a few pounds" are you giving the result of any experience that has fallen under your observation? A. I have not.

Q. In making this statement of a few pounds are you giving the statements that anybody else has ever pretended to give as a result of their experience? A. I have in a general way. 1075

Q. Just tell me who that man is that pretends to to have any such experience? A. I should say Taylor; I should say general works on medical jurisprudence.

Q. Can you tell where Taylor anywhere speaks of death being produced by it? A. Not any definite number of pounds.

Q. Nobody in the world can tell without guessing? A. Yes.

Q. Is it anything more than guess work? A. Yes. 1076

Q. It depends upon the position of the neck? A. Certainly; and upon the things used around the neck; and the direction in which that is applied; and whether there is any friction in the use of the rope; I should think, all these things bear upon it, I have no doubt.

Q. And the degree of weight would be in a greater or less degree dependent upon the friction with which the gravity was applied to the member? A. It would.

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AUSTIN FLINT, JR., called as a witness on behalf of the defendants, and sworn, testified as follows:

*Examined by Mr. Russell :*

I reside in the City of New York. I am physician; have been such since 1857. I graduated at



- the Jefferson Medical College in 1857. I began the practice of medicine in Buffalo, New York. I was for a year one of the attending surgeons to the Buffalo General Hospital. I was Professor of Physiology in the medical department of the University of Buffalo from 1858 to 1859. In 1859 I re-
- 1078 moved to the City of New York. I was professor of physiology in the New York Medical College in 1859 and 1860, I then went for a winter to New Orleans and was professor of physiology and microscopy in the New Orleans School of Medicine during the winter of 1860 and 1861. I was one of the original founders of the Bellevue Medical College in 1861 and 1862, and have held the chair of physiology and physiological anatomy in that institution since. In the meantime for two years I was one of the attending physicians for the Bellevue Hospital. During the war I was for two years
- 1079 one of the attending surgeons to one of the military hospitals in the City of New York. That I think, comprises my medical history. During the administration of Governor Tilden and during about one-half of the administration of Governor Robinson, I was Surgeon-General of the State of New York. I have written a large work on physiology entitled "Physiology of Man," in five volumes, a text book of human physiology, and various smaller works and contributions to medical literature in the way of articles in medical journals, and papers read before medical societies, and so on.
- 1080 Q. Have you devoted especial attention to the causes of death by asphyxia? A. I have studied the subject of asphyxia very closely within the last few years; probably as closely as any subject I have investigated.
- Q. Can you describe the mechanism of the congestions in death from asphyxia? A. I can describe what are recognized by scientific men as the me-

chanism of the congestion of various organs produced by asphyxia—certainly.

Q. Can you better describe the mechanism of those congestions by illustrations upon the black board? A. I could aid my descriptions in that way.

Q. You may describe the mechanism of these 1081 congestions, and if you can aid your description by the use of the black board you may do so. A. I shall attempt to describe, if it be proper, the mechanism of the congestion of certain organs, that would occur from asphyxia produced by a constricting cord about the neck. In the first place the presence of this constricting means or cord about the neck would necessarily obstruct the entrance of air into the lungs and would produce in a very few seconds an exaggerated sense of want of air amounting to what we recognize as a sense of suffering. That sense would necessarily and voluntarily be felt by violent attempts at inspiration, 1082 that is violent attempt to draw air into the lungs. The relation of the lungs to the chest is such that this elastic organ, the lungs—when the capacity of the chest is increased in efforts at respiration—follow the walls of the chest and the air rushes in through the windpipe to dilate these organs, the lungs. In case the air is not admitted into the lungs the chest nevertheless enlarges—the lungs cannot follow readily the enlargement of the chest, for the reason air is not introduced to supply what is called the virtual vacuum, consequently the air which already exists in the air cells becomes rarified and 1083 we have rupture of a number of these cells and this coalescence, and we have little ruptures of the cells situated just beneath. The action of the lungs produces the appearance known as emphysema, and that chiefly in the apex or in the apices of the lungs. At the same time the blood which passes through the lungs does not become oxygenated. It passes to the left side of the heart, and I will illustrate

here. Here I suppose to be the left side of the heart, which is drawn in red for the reason that the left side of the heart is filled with red blood. This cavity, which I mark "A," is the left auricle. That opens into this cavity, which I mark "B," which is the left ventricle—this left ventricle being  
1084 the stronger muscular portion of the heart, which, by its contraction, sends the red or arterial blood to every part or organ of the body—the left ventricle sends its blood through this great distributing vessel which I now draw, which is known as the aorta ; and from this, which is called the arch of the aorta, there are three vessels given off, one which I have just made, a second that I now make, and a third that I now make. These vessels, the first is called the innominate artery, an artery without a name. It branches into this vessel, which I have drawn here, which is the common carotid, and  
1085 this vessel which sends the blood to the upper extremity of the right side. This (indicating) is the common carotid artery on the left side, and this is the vessel which supplies the left auricle. This common "carotid," about opposite the larynx or Adam's apple, branches into two ; one which I now draw, the external carotid artery, which supplies the face, and the other, which I now draw, the internal carotid artery, which supplies the brain. And the same arrangement attains on the other side. Now, if a constriction be applied by a cord just above the larynx at the point I now indicate with white chalk—the external carotid arteries,  
1086 which supply the skin and face, are compressed by this cord or constriction, and consequently we do not expect, when the constriction is applied at this point, any congestion of the face, for the reason that the artery which supplies the vessels of the face is constricted and the blood cannot get there—the constriction being applied at this point, and we consequently expect the face to be pale. These two deeper vessels, called the two carotid arteries

which supply the blood to the brain, and another artery on either side, one upon either side called the vertebral arteries, which likewise supply blood to the brain, would not be constricted by a cord drawn tightly around the neck just above the larynx, and consequently when this aorta on the left side of the heart becomes intensely engorged with blood 1087 the membranes of the brain may become intensely congested, and it is very common not only to find such intense congestion, but that certain of these vessels have given way ; and on post-mortem examination it is very common to find a clot of recent origin between the membranes of the brain. That is the mechanism of the paleness of the face which is observed in cases of strangulation where a cord is at the place I have indicated. Co-incident with the intense congestion of the membrane of the brain, the vessels for the supply of which escape by their situation, the constriction made by the cord, we have here, which I draw in blue, because 1088 it receives blue blood, the right side of the head. These two vessels which I have drawn here, one, the large vein, which pours the blood from the head and arm downward, the other large vein which carries the blood from the trunk to the lower extremities. This opens into a stronger muscular cavity, or rather a cavity with stronger muscular walls, which is called the right ventricle. And the right ventricle sends its blood through the vessels which I now draw to those organs, which I marked with dotted lines, these are the lungs. The two sides of the heart, 1089 that is, the right ventricle sending the blood to the lungs, and the left ventricle sending the blood to all other parts of the body, act simultaneously and together. Now we have a picture before us of asphyxia produced by constriction just above the larynx. It always and necessarily follows, that this violent movement of inspiration here made, which the lungs cannot follow causes some of these

air cells in the lungs to burst. The blue blood passes into the lungs and is distributed to every part of these organs. There is no fresh air to turn that blood into red and it goes to the left side of the heart still blue blood and not rendered arterial.

1090 The left side of the heart cannot force this blue blood through the blood vessels of the system and that is the reason why so often there are found effusions of blood in the brain. But this vessel which I still draw in red, although in asphyxia it contains blue blood, becomes intensely engorged—engorged to the fullest possible extent. There are given off here blood vessels which go to this organ, the stomach, the blood vessel which goes to this organ here, the spleen (indicating on the board); a small blood vessel which goes to this great organ which I now represent, the liver; and blood vessels that go to all of the intestines. Coming down from

1091 there we find two very large and short blood vessels that go to the organs which I now draw, the kidneys. Now, the kidneys have a dense and inextensible fibrous coat; in other words, they can not swell. The coat of the kidneys is unelastic, when therefore, in asphyxia we have this intense engorgement of the abdominal aorta, that is, the great blood vessel of the abdomen, we find that the pressure of the blood in the kidneys is exceedingly great, and that the capillary vessels of these organs, the kidneys, are engorged with blood to the greatest possible extent, so that always, without exception, in cases of death from asphyxia, the kidneys

1092 are more engorged than any other of the abdominal, or any other of the organs of the body, excepting perhaps the lungs. This spleen has an elastic coat, and can enlarge so that the vessels of this organ are not so much engorged as the vessels of the kidneys or the stomach. We find the stomach intensely engorged to that extent that the appearance of the mucous membrane is sometimes like the appearance found in inflammation. The



same is true of the small intestines, that is, the bowels and contents of the abdominal cavity. But the liver receives a small branch, the greatest part of the blood from the liver is the blood collected from all of the abdominal organs, except the kidneys. A great vessel called the portal vein carries the blood collected from all these abdominal organs, except the kidneys, to the liver, and as a consequence the liver in asphyxia is not so much congested as are the other abdominal organs. 1093

And now, finally, in regard to the second, this aorta, as it comes down the back, gives off little branches between the ribs called the intercostal arteries, which divide and supply the skin of the back, this skin and the right arm entirely are supplied from the left side from this vessel which has rather a longer course. I represent it more accurately now (indicating on blackboard). The right arm however is supplied by a shorter vessel where the blood, from the course of the vessel has a better opportunity to go to the member; by that I mean to the arm—so that where congestion of the surface of the skin occurs, producing frequently these little spots of effusions of black blood, called ecchymotic spots,—this congestion from the anatomical supply of blood—or anatomical arrangement of vessels supplying blood—is most marked on the back, and if these ecchymose spots be found on either arm they are more apt to be found upon the right arm than upon the left. 1094

Now, in regard to the lung; this black blood passes through the lungs, and goes to the left side of the heart, and the left side of the heart cannot force it through the system. The blood vessel, the aorta as I have described it, or as it is named, becomes so much engorged that it can receive no more blood. The left ventricle becomes so much engorged that it can receive no more blood from the left auricle, and the left auricle can receive no 1095

more blood from the lungs. At the same time the blood is being poured in notwithstanding from the great veins into the right side of the heart, and is being sent to the lungs, there being an obstruction to the blood going out of the lungs and the right side of the heart, sending the blood with force into the lungs; these organs, the lungs, become deeply congested, and generally all of the blood in asphyxia being black, coagulates with difficulty, and the blood which engorges these organs, the lungs, is black and liquid, the heart becomes greatly enfeebled as respiration becomes permanently arrested, and it finally in some instances empties itself, and in some instances it does not; so that so far as the engorgement of the heart is concerned in cases of death from asphyxia, sometimes the cavities contain a considerable quantity of blood, and sometimes a small quantity.

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1097 That is my idea of the mechanism of the production of this congestion, and the view accepted by scientific men in general.

Q. Does the amount of blood in the heart depend at all on the strength of the heart or the heart's action in cases of asphyxia? A. If the heart be perfectly natural in its structure, and its muscular substance be vigorous, it would probably empty itself to a considerable extent.

Q. What are the evidences in cases of spitting of blood that the blood comes from the lungs? A. The blood, if it comes directly from the lungs, is always of a bright red color, and generally frothy from the admixture of more or less air in bubbles.

1098 Q. What do small fibrous nodules or cicatrices in the apex of one of the lungs indicate? A. They indicate previous tuberculous disease, or I might say old tuberculous disease.

Q. In case there has been a spitting of blood from tubercular disease, or hemorrhage of the lungs, and the wound is healed, and years elapse,

is it possible to detect it by auscultation or concussion of the lungs? A. In a great majority of cases no, unless the tuberculous disease has been quite extensive it would not be possible.

Q. Did you examine with a microscope any portion of the heart that was handed you by Dr. Sherman? A. I did. 1090

Q. What did you discover? A. I made an examination of certain specimens handed me by Dr. Sherman, which specimens I found to be composed of heart substance or muscular fibers, perfectly natural and unaltered by disease.

Q. Can you describe the difference in the character of healthy and diseased fibers of the heart? A. There is one form of diseased fibers of the heart which is the most common of all, that is fatty degeneration. I can describe the difference between those I think.

Q. Is or is not blood likely to be mixed with mucus in the bronchial tube in asphyxia? A. It is likely to be mixed, that is it is likely to be bloody from rupture of small vessels in the mucous membrane of the bronchial tubes during the intense congestion produced by the asphyxia. 1100

*Cross-examination by Mr. Smith :*

Q. What is your age? A. Forty-seven; my full name is Austin Flint, Jr.

Q. Your father is an eminent physician in New York, I believe? A. I believe so; I believe him to be an eminent physician. 1101

Q. And is it he that is the author of that large book on medical subjects? A. He has written many medical works.

Q. When did you come here in this case? A. I arrived in Norwich a week ago last Tuesday morning, and I have been here ever since; I never have been in Norwich before.

Q. While you have been here you have been

actively engaged in the preparation of the testimony in this case? A. I have had nothing to do with the case except in regard to medical questions.

Q. While you have been here have you been actively engaged on the part of the defence in preparing medical testimony to be given here? A. I think not.

Q. Have you been engaged in that business? A. I think not.

Q. Conversing with and negotiating with doctors upon the subject? A. I have negotiated with no doctors, I have conversed with doctors in regard to this case.

Q. And with a view of preparing the testimony? A. No, sir.

Q. You have been in the court-room most of the time? A. All the time.

Q. Have you taken part in the proceedings of the trial? A. This is the first part I have taken. I have probably answered questions that have been asked of me in the court-room by gentlemen engaged as counsel for the defendant in this case and probably have suggested questions that have been put to medical witnesses.

Q. And written questions and handed them to counsel to be put? A. I don't remember having done so in the court-room.

Q. This you have done at the retainer of the defendant? A. I have been employed by the defendants to look up certain medical points in connection with this case.

Q. Have you done these things in Court at the instance and retainer of this defendant? A. I imagine so, I am retained by the defendants.

Q. Are you retained in any other capacity than as an expert? A. I don't know what other capacity I could act in. I was retained as an expert in the case.

Q. Have you been retained in any other capacity

than as an expert and to give your testimony as such? A. No.

Q. Do you know Dr. Wood? A. Very well.

Q. Did you go to him with this case? A. Yes, and I had an interview with him at the instance of counsel for the defence.

Q. In what capacity did you go to Dr. Wood? 1105

A. To consult him in regard to certain points in the case, as a medical man, to get his opinion. That must have been about the middle of last May, I think; I went from New York to Philadelphia for that purpose—to see Dr. Wood and three other gentlemen.

Q. Did you go over there to give him your views or to get his? A. I went over to get his. I discussed the matter with him; I gave him views of this case that I entertained.

Q. Have you given varying and different and conflicting and inconsistent views on different occasions in reference to this case? A. I don't know that I have. 1106

Q. Have you given a written opinion of this case that is in existence and here? A. No, none that is here.

Q. Have you never given a written opinion in this case? A. I gave a written opinion after my first examination of this case in May, the very night or day I was asked to look into it. I don't know where that opinion is. I sent it to Mr. James Thompson of New York, one of the counsel here. That was in May.

Did that opinion differ from the one you have 1107 given here? A. That opinion was—

Q. I beg your pardon, I did not ask what it was. A. I don't remember what it was.

Q. Does it differ from this? A. Undoubtedly it differs.

Q. Was that opinion in reference to the case of Colonel Dwight? A. As I understood it from certain papers that were given to me.



Q. And did you give another one afterwards still differing from that? A. No written opinion.

Q. A sort of postscript to the other? A. I don't remember anything of that kind.

1108 Q. You have been making a picture on the black board here in Court, using different kinds and colors of chalk, and you have attempted to represent the heart and some of the surrounding organs to show how they exist in a human body? A. I have made diagrams, but no attempt at fidelity of representation. I have made an attempt to make a diagram.

Q. This is very much like the common engravings we see in books representing the heart and surrounding organs? A. I won't venture to say.

Q. It is about the same you see in all these books on physiology? A. I won't volunteer to give an opinion on that.

1109 Q. How long do you think you have been occupied here in delivering your testimony? A. I can't form any idea.

Q. Not even with all your experience as a doctor. How long have you been occupied here, standing up there by the Court delivering your testimony and demonstrating it by a picture? A. I suppose fifteen minutes, I can form nothing but a guess on it though.

Q. This is very much the representation you are in the habit of making, I suppose, in lecturing to a class in the Medical College in New York? A. Yes, very much after the same style.

1110 Q. The same thing has been in print? A. I imagine every statement I have made has been in print.

Q. Now, with reference to this congestion. You used one term, I think it was mechanism of congestion—now define as to what is meant by the mechanism of congestion? A. By the mechanism of these congestions, I mean the causes which produce

these congestions, and the manner of the actual production of the same.

Q. Have you ever seen that term anywhere, the mechanism of congestion? A. I think it is an entirely scientific term.

Q. Can you tell us where it occurs? A. No.

Q. Now, this mechanism of congestion relates in this class of cases to the external or physical operations affecting the circulation. Is that the idea—mechanism of congestion—is that the idea, or what? 1111

A. I should say the mechanical processes that take place in the progress or production of congestion. It is applied to the condition of the vessels.

Q. It applies to the circulation of the blood? A. In a sense it does.

Q. Now, the results would depend, I suppose, in a great degree upon the condition of the subject?

A. I am assuming and I have assumed in my description a healthy subject. 1112

Q. Would these results depend in a great degree upon the condition of the subject, for instance, where you say the kidneys would be violently engorged, wouldn't that depend upon the condition of the subject? A. Not in relation to the kidney, I think.

Q. Wouldn't it depend upon how much blood a man had in him? A. Undoubtedly.

Q. If the circulation of the blood in any part of the body were suddenly arrested, would the results produced, or which you would expect to find, depend very much upon the condition of the blood at the time when the circulation was arrested? A. I 1113

am not captious, but I do not understand what you mean by the arrest of the circulation of the blood.

Q. I mean by stopping it. A. By stopping the entire circulation?

Q. I mean by stopping it, if you don't understand me I will ask another question. A. If you will allow me to define the point in which I do not understand you I will do so.

Q. Suppose you found a man who died by strangulation, whose blood was thin and wasted by disease, would you expect to find the organs in a different position from those of a man who died from strangulation in the full vigor of health and full of blood? A. Not essentially.

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Q. It would be all alike? A. There would be no essential difference. The quantity of blood in the body does not vary considerably without hemorrhage.

Q. So that whether a man had been sick a month, you think would not affect the quantity of blood in his system? A. Not to any very great extent.

Q. If he had been without food a month, would it affect the amount of blood? A. It would.

Q. Would it diminish the amount of blood? A. A month would.

Q. Would two weeks diminish the amount of blood? A. It would.

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Q. Would a minute—one single minute—of want of nutrition diminish the amount of blood? A. Not perceptibly.

Q. Isn't the consumption of blood going on every minute; I mean every time a man bends his arm don't it require the consumption of blood? A. No.

Q. If you stop the blood in a man's arm, could he lift it? A. Yes.

Q. Without blood; do you say that stopping the blood in a man's arm would not stop the power of motion? A. You will have to define what you mean by stopping the blood in a man's arm; I don't

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recognize any such condition.

Q. Do you understand it? A. I honestly say I do not understand it.

Q. You have spoken here to a considerable extent upon the condition of persons who had died from asphyxia; these statements you have made are the results of personal observation? A. I never have seen a person who died from strangulation.

Q. Are these statements you make here derived

from books? A. They are from experiments upon animals chiefly.

Q. And neither from books nor your observations of any cases of a human being? A. I never have seen a human being who had died from strangulation.

Q. So the condition of the blood vessels of a human being dying from strangulation is with you a mere inference, which you have drawn from other evidence? A. I am familiar, through reading, with the condition of the blood and with the blood vessels of persons who have died from strangulation, and I have made experiments upon animals upon those points, and those are my sources of information. 1117

Q. But no personal knowledge? A. I never have seen a person who died from strangulation; I have made experiments; I make them constantly, and have during the last fifteen or twenty years; I don't mean every minute or every day, but I have made them habitually; I have made them within a week of my coming here, upon animals—upon a dog. I subjected a dog to asphyxia; I think my assistant interrupted the respiration of that dog; I don't care to use the word "choked;" it is in no sense applicable to the experiment. That is the reason I am endeavoring to be plain. 1118

Q. Did you mean to be understood that the words "interrupted the respiration of the dog" are more appropriate, is that your idea? A. I do.

Q. Then I will ask you whether the interruption of the breathing of that dog was continued to that degree or duration that it stopped it? A. Yes. 1119

Q. Then I suppose you proceeded to cut the dog up, or dissect the dog—is that right? A. That is a correct term. A dissection was made on the dog under the influence of ether before the respiration was interrupted.

Q. You went to cutting the dog up before he was dead—is that it? A. That is so.

Q. Were there any of these results which you have been giving here ascertained by the experiment of cutting open the dog while he was yet alive? A. They were; that and others; while the dog was in that condition I looked at his heart, his kidneys, his liver, his spleen, his lungs; I examined all his organs.

1120 Q. Did you discover any of the conditions on that dog while you were cutting him up while he was alive that you have mentioned here? A. Yes.

Q. While the dog was being cut up thus was he under the influence of some substance? A. He was under the complete influence of ether, so as to be entirely insensible.

Q. But so as to stop his breathing, did the dog have those operations suspended? A. The breathing employed was artificial respiration, which could be furnished by a person performing it at will, and resumed at will.

1121 Q. What is that artificial breathing apparatus that can be continued and arrested at will? A. A common bellows; that was used on the dog.

Q. And were these conditions produced on the aforesaid dog while he was undergoing those processes, and when the use of the bellows was suspended, that you have regarded as indicating some other condition that you have described here, or indicating some of the effects of asphyxia? A. This was an illustration to illustrate conditions that I had ascertained before by similar experiments.

1122 Q. Was there any result by the use or omitting to use the bellows after cutting into the dog as you have described, any result that you ascertained which you regard as a demonstration of any of the features of this case of asphyxia? A. I had ascertained it before and saw it then.

Q. What was it that you saw in that dog at that time, while you were operating with these bellows, which illustrates any of the effects produced by



asphyxia? A. The great engorgement of the arterial system, the engorgement of the kidneys, and that was all that was attempted to demonstrate on that occasion.

Q. Did you take out the kidneys of the living dog? A. No, I did not, nor did I take out the liver.

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Q. All you knew about the engorgement was while it was in the animal? A. I didn't speak of seeing an engorgement of the liver.

Q. Of the kidneys? A. Yes.

Q. Did you take them out? A. No.

Q. All you saw was what you saw in the animal there? A. Yes.

Q. That is one of the appearances on which you predicated your statements here? A. No.

Q. Did that dog have anything to do with your testimony here? A. No.

Q. Is there any examination that you have ever made of any body, either of a human being or of any other creature, that illustrates any of the propositions which you have represented in that red, white and blue picture? A. Yes.

1124

Q. When was that experiment? A. I suppose I have made a hundred experiments of that kind, when investigating the subject of asphyxia; as to giving the date of any one experiment without referring to the article in which those experiments were recorded, it is absolutely impossible for me to do it.

Q. In any of these cases, these hundreds of cases where you have made experiments in treating of the subject of asphyxia, cases where respiration had been completely stopped by the use of a rope? A. I have tied a cord around the trachea or wind-pipe repeatedly. I never used what is known commonly as a rope; I have used a cord. I have attempted to answer the question distinctly.

1125

Q. The question is whether you, in any of these hundreds of experiments which you have men-

tioned, or volunteered to mention or otherwise, you have ever made a physical examination of the interior portions of the body of any creature that died from the suffocation of a rope around the neck? A. If you will define to me what you mean by "rope" I will give a distinct answer.

- 1126 Q. I mean the fibers of any commodity, cotton, linen, silk or wool, so drawn out and then twisted and wound together, as to form one continuous substance capable of being wound around a neck and strong enough to bear stretching, contracting or force? A. I know what is meant by "rope," and I have never used a rope. I have used a cord of sufficient strength—about half the size of my little finger—about a quarter of an inch in diameter, say the size of a lead pencil.

- Q. What animal have you ever experimented upon by the use of a cord of that size, and when, and where and who was present? A. I have made  
1127 experiments of this character in Bellevue Hospital Medical College, in the City of New York, in the presence of C. F. Roberts, my assistant, and other assistants repeatedly.

Q. Did you use the cord to the extent necessary to kill the animal? A. When I used the cord to tie the windpipe of this dog it killed him finally.

Q. Then you dissected the dog? A. I have no particular experiment in my mind as I am thinking now; it is only one of a series.

- Q. Do you mean to say you can't remember a circumstance of that kind to identify it, when you have done it nine hundred million times? A. I  
1128 haven't done it in nine hundred million times; I have in my mind at this moment in answering your question no particular experiment.

Q. I want you to get one in your mind; if you make such an experiment I want you to state it and I want to know who was present. Are you able to recall a single case where the animal or creature of any kind was put to death in any such

way that you can now recall and identify and particularize even in the most general way? A. I can identify any case that has occurred in a public demonstration in the form of a lecture, and I can tell in general terms who assisted me, and I could tell, by reference to notes, the date of the lecture. In regard to other experiments I could identify 1129 them by referring to articles written upon those subjects where the date of the experiment is given and the names of the persons present, but as to carrying those things in my mind it is impossible for me to do so.

Q. I want to know whether from memory now, as you sit there, you can recall any single instance so as to identify it when you made such an experiment? A. As tying the trachea with a cord? I don't know your experiment, counsellor, if you will tell me I may be able to answer intelligently and clearly.

Q. Now, speaking from memory, can you recollect a single instance where you made the experiment upon any creature or body by strangulation by the use of a cord around the neck? A. Yes. 1130

Q. When was it? Of course I don't suppose you can be precise. A. That was in my last lecture upon the action of the heart.

Q. When was that last "lecture upon the action of the heart," that you delivered? A. Occurring from three to five weeks ago.

Q. Did you at that time have the respiration of the dog suspended to that degree that it produced death? A. Yes.

Q. When was he cut up and dissected? A. I don't know what became of him after the lecture. 1131

Q. Without any regard to the time of the lecture, after animation was suspended, was he dissected? A. I don't know; he was taken out of my observation, and I haven't seen or heard anything of him since.

Q. Did you see anything of the internal organs

of the dog after the respiration was interrupted?  
A. Yes.

Q. Then he was dissected? A. He was dissected before the respiration was suspended, and not afterwards.

Q. Have you had much experience as a witness?

1132 A. Very little.

Q. The question I intended to put was whether you had had any case where the dissection was after the animal was dead? A. I don't at this moment remember any particular experiment where an animal was strangled with a cord and allowed to die from that cause and I made a dissection after his death.

Q. Has there been a case where you have made an examination of any body of any kind, or any species after death by asphyxia? A. Yes, I have many.

1133 Q. Can you recall one of these cases? A. I can't locate one, but I can recall in a general way many of them.

Q. Can you state one of them, so I can know the person or persons that witnessed it? My idea is to identify the thing so it can be known? A. There must have been many that have been witnessed by the persons I mentioned.

Q. Has there ever been a case of an autopsy of a body that had died of strangulation or asphyxia that you can identify here so that we can tell when and where and what it was? A. Yes.

1134 Q. About when was it? A. About five weeks ago, or about a year from five weeks ago.

Q. Where? A. In New York City, at the foot of East 26th st. In New York City in a building known as the Bellevue Medical Hospital; Dr. C. F. Roberts was present and one or two others whose names I do not remember; I do not at this moment remember their names.

Q. Was it a case of asphyxia or suicide? A. Suicide is not applied, so far as I know, to or does

not occur in animals. I am answering as to the body of an animal according to your definition of "body."

Q. You give it as a specimen of your medical skill and knowledge that suicide does not apply to animals? A. No, I said it did not often occur in animals.

1135

Q. What animal was it? A. It was a dog.

Q. Doctor, what is a nodule? A. A nodule is a small lump.

Q. Is that the best definition you can give? A. A nodule is a small collection of matter, and I think in the sense in which you intend to ask the question that the definition "a small lump" would express it.

Q. What is a nodule when found in that portion of the human body called the lungs? A. It is a small lump or collection of fibrous substance or other substance.

Q. Ordinarily about how large? A. It may be of any size. 1136

Q. You don't mean as large as a load of hay? A. A nodule does not refer to size.

Q. Can't you give some idea of the size of a nodule? A. I should say it would be the size of my little finger. The size of a marble perhaps.

Q. Is it something like what we would call in common parlance a kind of fester—a little thickening of the texture standing alone? A. It occurs sometimes in the lungs in the form of fibrous matter—a little collection of the fibers.

Q. Can you tell from a living being whether he has got nodules or not when he is alive? A. By the term "nodules" it may mean nodules of any kind, form, shape or consistency in any part of the body. If you will specify in what part of the body I will cheerfully answer. 1137

Q. I asked about nodules in the lungs and I want you to tell this jury as a gentleman of great learning and experience whether you can tell upon a



living subject whether he has nodules in the lungs or not? A. If he has small nodules in the lungs it is impossible to tell.

Q. Can you tell whether you have yourself or not? A. I couldn't make a physical examination of my own chest; it is impossible.

1138 Q. Can you tell whether you have them or not as you sit there? A. I cannot.

Q. About this spitting of blood—the mouth is constantly moist and if blood runs into it it would mix with the moisture? A. It would not be absolutely clear then.

*Re-direct-examination by Mr. Russell:*

Q. You have been asked whether a man could examine himself so as to tell whether he had a small fibrous nodule in the apex of his lungs, could not a man tell in the case of an ulceration of the lungs from which proceeded a hemorrhage of spit-  
1139 ting of blood as to where the blood came from? A. A man who spat blood from the lungs would be likely to know that it came from the lungs.

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DWIGHT M. LEE, called as a witness on behalf of the defendants, and sworn testified as follows:

*Examined by Mr. Russell:*

1140 I reside in Oxford, and am a physician and surgeon; I have practiced for about 19 years; for about 18 years in this country; am a graduate of the Albany Medical College.

Q. In the case of a person who had presented no variations from the natural temperature of the body for four weeks, could such a person, in your judgment, have had congestive chills, during such time? A. No, he could not.

Q. Assuming that a patient was taking Gelseminum, Fowler's Solution, Calomel, and Morphine, what would be the effect of those medicines upon the heart and the heart's action? A. It would have weakened it.

Q. In a person having a history of distinct bleeding from the lungs and spitting of blood some years before his death, and who on examination after death presented a cicatrix and small fibrous nodules at the apex of one lung, what would be your opinion as to whether the cicatrix and fibrous nodules were the remains of old tuberculous deposits being the true cause of the bleeding from the lungs and the spitting of blood? A. My opinion would be that they were the results of old tuberculous deposits, in my judgment the spitting of blood would have proceeded from the old ulcerations. 1141

Q. After the lapse of years would it be possible to detect the presence of such a cicatrix and such fibrous nodules as I have described by a physical examination of the chest during life of the person? A. Probably not. 1142

*Cross-examination by Mr. Smith :*

I came here this morning at the instance of Dr. Avery I think—the man that was on the stand here; he did not subpoena me. I am here at his instance, at his request, and not otherwise. He stated that I would be remunerated for my time, I suppose that is what you are after. That request was put to me last Monday morning. The amount of the remuneration has not been indicated in any wise, nor what source it was to come from. 1143

Q. As you are there testifying do you know on which side you are a witness? A. I suppose I am a witness on the part of these insurance companies. I have been giving testimony in regard to whether,

in my judgment, previous hemorrhage might have resulted from the conditions stated to me, or whether those conditions might have possibly been the result of previous hemorrhage. My answer was not mere guess work. It was the result of reading. I don't think I have read anything upon that subject in several months. In the month of June I read Neymyer's practice.

1144

Q. What did you read about nodules? Anything as to what they were? A. Yes.

Q. Do you know what they were, except by reading it in Neymyer's or Neymiyer's book? A. Except from that and other books.

Q. Well, what are nodules? A. A nodule is a small lump. In the lung it is usually a fibrous lump.

Q. Is there anything in the book about how you could discover it? Do you know anything about how it could be discovered in the living subject?

1145

A. There are rules laid down. By auscultation, the physician judges whether the lungs are free or not,—whether the air passes in to the air cells or not by listening.

Q. Whether there is any murmur? A. Yes.

Q. And if the thing goes free then no nodules? A. That's the supposition.

Q. If it is all free then there are none—if it is disturbed then there are some? A. It doesn't necessarily follow, there may be some other disturbances.

1146

Q. Is there any way in which you can describe to us here by which the existence of nodules can be detected upon a living subject? A. I don't know as there is—not in that situation.

Q. Have you any personal knowledge of the appearance of these nodules after death? A. No.

Q. Never having seen one I suppose you haven't any idea from your own observation as to their effect? A. No.

Q. Or the symptoms of their effect upon the health? A. No.

Q. Or whether they are fatal or not—a man might have nodules and live a thousand years from any other cause than nodules? A. Yes.

Q. What is a cicatrix, as you understand it? A. A scar. A cicatrix of the lungs would be a scar on the lungs. They are not commonly found in subjects after death. 1147

Q. This spitting of blood—have any cases of that kind fallen under your observation? A. Yes.

SAMUEL M. HAND, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Russell :*

I reside in Norwich, and am a physician and surgeon. Am a graduate of The Berkshire Medical College of Pittsfield, Massachusetts. Have practiced the profession of medicine since 1853. Have been a resident of Chenango county for about nineteen years and a half. I was coroner six years. 1148

Q. In the course of your experience as a physician and surgeon and coroner have you known of cases of suicidal strangulation? A. Yes, several—eight.

Q. Any of those cases where any portion of the body was touching the ground? A. Yes, one.

Q. In your judgment, have you formed, or are you able to form a judgment as to the amount or weight of pressure that is necessary to occasion death by strangulation? A. No. 1149

GEORGE P. HASKELL, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Russell:*

1150 I reside in Brooklyn, New-York. I was, during the years 1878 and 1879, a member of the firm of Cortwright & Haskell ; we were the general agents of the New-York Life Insurance Company of the State of New-York.

Q. Did an application for a policy upon the life of Walton Dwight come to the hands of your firm in the summer or autumn of 1878? A. Yes, an application for twenty thousand dollars. That application was received from N. W. Batchelder of Albany; he was not an agent for the New-York Life Insurance Company, nor was he an agent of ours.

1151 A policy was issued on that application for ten thousand dollars. That policy came into the hands of the firm ; it was sent to Mr. Batchelder for collection of premium and remittance less the brokerage.

Q. I understood you to say that Batchelder was not an agent either of the New-York company or yourself? A. No, he was not.

Q. What was the inception of this business in regard to the policy on the life of Walton Dwight—what was the first step in it? A. Mr. Batchelder communicated with our firm of Cortwright & Haskell, and asked what brokerage we would give if he would—

1152 Q. Did you or your firm ever have any communication directly with Mr. Dwight on the subject of the application for insurance, or with any other person but Mr. Batchelder? A. No.



ALBERT D. HITCHCOCK, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

I reside at Franklin, Delaware County ; I am 1153  
now working as a printer and reporter ; in the  
years 1878 and 1879 I resided at Binghamton ;  
during those years I was city editor and reporter  
of the Binghamton "Daily Leader." I knew of  
the alleged sickness of Colonel Walton Dwight, in  
the autumn of 1878, and I knew when he died ; I  
attended at the coroner's inquest that was held in  
April, 1879, near the cemetery, upon the body of  
Colonel Walton Dwight, when the body had been  
disinterred for the purpose of examination by the  
coroner's jury. I attended there to report the  
proceedings for the "Leader." I saw the remains  
of Colonel Dwight when they were brought from 1154  
the cemetery to the building where the examin-  
ation was made, and I saw them when they  
were removed from the casket and placed upon  
the table.

Q. Are you able to say whether or not attention  
was called by anybody to the existence of anything  
on the neck of the body—was attention called  
by anybody to the fact as to whether there was  
a groove or furrow on the neck of Colonel Dwight's  
body ? A. The attention of the coroner and jury  
was called by some person to such a groove or  
indenture in the neck.

Q. Did you yourself look to see where it was ? 1155  
A. I did.

Q. What did you see on the neck of those re-  
mains at that time ? A. I saw a mark or groove or  
discoloration of the neck.

Q. State the appearance of the groove you  
observed on that occasion ? A. The appearance  
was of a mark on the neck ; it was under the chin

on the right side extending on the right side ; from the position I occupied I could see only one side.

Q. How far in front did this groove commence ? How far or how near to what is commonly called the Adam's apple ? A. It was on the right side of it—it commenced not far from it.

Q. And was its direction upward or downward as it went backward ? A. Upwards towards the ear.

Q. Could you now state from memory at what angle this groove extended upwards and backward from the Adam's apple ? A. No, I don't know that I could ; it was below the jaw.

Q. Would a description of from 40 to 45 degrees accord with your recollection ?

1157                    Objected to as leading. The Court sustained the objection, to which ruling counsel for the defendants duly excepted.

Q. How did the color of this groove compare with the color of the skin surrounding it ; was it of the same color, or darker or lighter ? A. It was darker.

Q. What was the depth so far as you are now able to state, of this groove to which you have referred ? A. I did not examine it closely enough to state the depth, but it was a noticeable groove or mark.

1158                    Q. Has anything occurred in the course of your observation to fix this appearance upon your memory ? A. There has.

Q. Were you ever present or did you ever assist in taking down the body of a person who had committed suicide by hanging ? A. I did.

Q. In what position was the person found to whom you now refer ? A. Resting on the knees and toes.

Q. Resting on the ground? A. Yes, on the floor.

Q. Describe the position of the body to which you refer when you assisted in taking it down?

Objected to as irrelevant, improper and immaterial. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted. 1159

Q. Have you acquired a personal knowledge of the appearance produced on the neck of a human being by a rope or cord which has been the means of producing death, from personal observation? A. I have, so far as that one case is concerned.

Q. What is the appearance of the groove on the neck of a human being who has died from hanging with a cord or rope, death being produced by such cord or rope? A. There was a groove extending from the Adam's apple up towards the ear, a groove that one could easily lay his little finger in, and discolored at the edges. 1160

*Cross-examined by Mr. Smith:*

Q. In the answer to the last question, is the whole extent of your knowledge upon the subject covered by what you saw in the exterior of one other individual? A. It is.

Q. And is that the extent of your actual knowledge upon the subject to which your attention has just been called? A. I think so.

Q. Have you any knowledge of the exterior appearance of a dead body of a human being so far as relates to ridges, streaks or marks, except the two cases to which you have referred? A. I have none. 1161

Q. And on this occasion to which you have been referring as to the appearance of the dead body of Walton Dwight, did you understand then and do you understand now that it was knowledge derived

after he had been buried more than five months?  
A. I do.

1162 Q. State as nearly as you can the number of persons who at this cemetery barn gathering were surrounding the dead body of Walton Dwight, and had equal facilities with you to see and know what was the exterior appearance of the body? A. I couldn't give the number; there were quite a number there; there may have been from 25 to 50, that would be my judgment; the large portion of those gentlemen were residents of Binghamton; there were quite a number of physicians, I should say.

Q. And several insurance lawyers? A. I couldn't say; I only remember one—Mr. Freeman. I don't know his christian name; I only remember one newspaper reporter besides myself, that was Mr. Frank A. Mentz—a man connected with our paper who came while I was there; I couldn't say that  
1163 there were any stenographic reporters there.

Q. How near did you get to the body—the very nearest approach you made? A. No nearer than I am to you, I should say. I should say about eight feet—eight or ten feet. I hadn't been present at the previous examination of the body of Colonel Dwight.

Q. Was there a jury present upon the occasion you were there when you made this observation?  
A. I so understood.

Q. Didn't you know whether there was a jury there or not? A. I only saw Dr. Richards.

1164 Q. Weren't the jury all doctors? A. There were doctors there.

Q. Can you state whether there were a number of men there acting as jury, and they were all doctors? A. I suppose so; I could not swear to that, sir; I took it for granted they were.

Q. What did you say your present occupation was? A. Connected with the newspapers.

Q. What is your actual occupation? A. Writing for a newspaper and setting type for a newspa-

per—the Delaware County Dairyman, I am a compositor on that paper ; I have been there about ten weeks. I was subpœnaed to come here yesterday by George B. Curtis of Binghamton, a lawyer down there. He is the district attorney elect.

Q. When did you first disclose the circumstance that you had any knowledge one way or the other upon the questions involved in this case, and to whom and where. Name the man so we can send for him if he is needed? A. I can't name the man. 1165

Q. Can you name any human being to whom you ever disclosed the circumstance that you had any knowledge bearing upon this case? A. I cannot.

Q. You have known, I suppose, for the last five years, that the matter to which your attention has been directed was to be the subject of legal investigation? A. I have.

Q. And during how much of that time have you lived in Binghamton? A. But a very few months; I can't say. 1166

Q. Have you ever, during any of that time, disclosed to a being that is now living, before coming on the stand here, your knowledge upon the subject? A. I think I have talked with different persons, but not in Binghamton.

Q. Have you ever in all that time disclosed to a living being the circumstance which you have testified to here? A. I have.

Q. Who is that? A. I can't tell you.

Q. Where? A. In Binghamton on the afternoon when the German was hanged—in the undertaking room of J. S. Freer. 1167

Q. Who was present and heard what you said? A. Dr. Richards was present; I don't know whether he heard what I said. I can not say who heard.

Q. Can you name any living being who heard what you said? A. I can.

Q. You have been asked here about your knowl-



edge of persons who died by suicide; did you ever see a being commit suicide? A. I did not.

Q. So that as of your own knowledge whether any person ever died by suicide or not, you are unable to state? A. Only from that one case. I did not see it. It was from surrounding circumstances.

1168 Q. From your own direct personal knowledge has there ever been a case of suicide? A. Never.

Q. Who is this German of whom you have so often been speaking? A. His name was Barnacle—John Barnacle, I think. Barnacle, at least so called. I saw him hanging in a barn in the fifth ward in the city of Binghamton, about June or July, 1878 or 1879. I saw the body before it was cut down.

Q. Who else saw it? A. Dr. Richards, the coroner at that time, and a policeman with whom I went there. I can't tell his name. Adam Cram was one of the jurors at that time. I don't remember the others.

1169 Q. And this man you saw when first seen by you was hanging by a rope? A. By a cord.

Q. I seem to be unhappy in the use of words. What is the difference between a rope and a cord? A. One is smaller than the other.

Q. Where does it cease to be a rope and begin to be a cord in size? Doctor Flint seemed to think I was wrong? A. A cord ceases to become a rope the same as twine ceases to become a cord.

Q. Twine ceases to be twine when it gets down to the fiber. Can you answer any other way? A. A cord is smaller than a rope, as I understand it. I have no other way to answer it.

1170 Q. Was this man you saw suspended there hanging by a rope? A. No, by a cord.

Q. What was the diameter of the cord? A. I should say about one-quarter of an inch. It was a single cord around his neck; the other end was attached around a rafter; he was hanging from the rafter of that barn. He was on the upper part of the barn floor—in the loft of the barn, resting on

the knees and feet. The weight of the body was resting on the cord. He was on his knees; I know it.

Q. On his knees? A. On his knees and feet leaning over.

Q. And the weight resting on the cord? A. Not entirely on the cord; of course he was resting on his knees to a certain extent.

1171

Q. You cut down the body? A. No, I helped to take it down; a policeman cut the cord with his knife.

Q. You took the cord off from his neck? A. The policeman took it off; I couldn't swear whether I did or the policeman, but I think he cut it and took the cord from the neck.

Q. You saw that man's neck? A. Yes.

*Re-direct-examination by Mr. Larocque :*

Q. You have been interrogated by the counsel for the plaintiffs as to the circumstances under which you made any statement or declaration on what you observed on the body of Walton Dwight on the coroner's inquest; were you present after the body of the German to whom you have referred had been removed for the purpose of having an investigation as to the cause of death? A. Yes.

1172

Q. I understood you to say that Dr. Richards, the coroner, was present at that time; is that so? A. Yes, at the time of the inquest.

Q. Do you recollect whether Dr. Daniel Burr was there? A. He was.

Q. Can you recall anybody else that was there? A. I cannot, with certainty.

1173

Q. Did you make any statement when the two persons you have mentioned were present in the room with reference to what you had observed on the body of Walton Dwight? A. I couldn't give the exact language.

Q. Did you make a statement in reference to what you had observed on the body of Walton

Dwight on that occasion and in the presence of the persons you have named ? A. I did.

1174 Q. What statement did you make on the subject of any similarity or resemblance between the groove which you had observed on the neck of Walton Dwight at the time of the Coronor's inquest on the body, and the groove on the neck of the German of whom you have testified in the presence of Dr. Richards and Dr. Burr at the time of the inquest upon the body of the German ?

1175                   Objected to on the ground, first, that it calls for the unsworn statement of a third person ; second, that it relates to a subject wholly collateral and immaterial ; and third, that the whole of the testimony itself is immaterial ; the Court sustained the objection, to which ruling counsel for the defendants duly excepted.

THE DEFENDANTS HERE RESTED.

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PETER VAN VREDENBURGH, recalled by the plaintiffs, in rebuttal, further testified as follows :

*Examined by Mr. Newton :*

1176 I first saw or knew Walton Dwight in 1867, and from that time on I knew him, about 11 years, seeing him as often as one resident of a town would see another, if they were both on the streets a good deal ; I was local editor of the " Republican " all of the time ; I never knew him to be out of health during that time, and never heard him cough.

Q. I will ask whether or not you ever saw him spit blood ?

                  Objected to as incompetent and im-

material, and also on the ground that the question is suggestive ; the Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. I never saw him spit blood. When I first 1177  
 heard of Dwight's death I was in the " Republican " office ; it was between half past eleven and twelve ; I was at work ; I went right away after hearing of it to Mr. Dwight's room ; upon arriving at the room I found there Mr. Charles A. Hull ; at this time the undertaker had not arrived ; he came just as I was leaving ; at the time I arrived Dr. Burr was not in the room ; I did not see him ; Warren Spaulding was there ; he came in while I was there ; the body of Walton Dwight when I reached there was in the bed room off the parlor ; the body was about in the middle of the bed, bolstered up with pillows, and laid at an angle of about 45 degrees ; his countenance was a little pale, but quite natural ; the eyes were wide open and the jaw was dropped way down ; a shirt is all I saw on the body ; the head was lying back and the whole neck was exposed to view ; I noticed it at that moment ; there was no collar on, but quite a wide band nicely ironed ; I think it was buttoned ; there was no mark or crease or discoloration about the neck at that time ; he had a large full neck of medium length, perhaps a little short ; he was a very broad shouldered man ; he was in good flesh, perhaps, but not a fleshy man for one of his size. I did not help carry him out 1178  
 when he was laid on a board that night ; it must have been about twelve o'clock when I left there ; I don't remember looking, but my impression is that the head of the bed stood right up against the wall ; I didn't notice that the bed was away from the wall ; I think it stood up in the corner ; I placed my hands upon the body of Mr. Dwight ; on both hands and on the face ; the hands and face felt 1179

1180 warm and soft. I simply went there and spoke with Mr. Hull a moment, and passed into the bedroom and saw the body and came out, and, I think, I had a little more conversation with Mr. Hull and then left ; I noticed the position of his arms ; when I went in his arms were lying down between his knees, and I raised them and laid them outside ; his knees were bent slightly, his feet had evidently been drawn up about three inches, and then settled back and left a little bag in the bed-clothes over them.

Q. State whether there was anything to prevent anybody going in and out of the room on that occasion, that you observed ?

1181 Objected to as immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. The doors were unlocked ; both the door in the hall and that in the bed room were unlocked ; the front door of the house was unlocked and the other doors were open ; I went in the bed room alone. I was during that interview in the bed room alone.

1182 Q. Had you a conversation with Mr. Dwight in the summer of 1878, relative to his insurance and his object in procuring the insurance ? A. I had ; that conversation was right in front of No. 75 Court street ; that conversation occurred about October, 1878.

*Cross-examination by Mr. Russell :*

I believe I am the same gentleman that is named in the will of Walton Dwight, as Peter Van Vredenburg ; I am the only one in Binghamton of that name ; I was a casual friend of Mr. Dwight, I cannot say I was an intimate friend.

Q. Did you see Mr. Walton Dwight during any



portion of the time that it was alleged by others  
 that he was sick in the fall of 1878? A. I didn't  
 see him except as he came upon the street. I can't  
 tell when, only I saw him often. My work was on  
 the street a good deal, during this period which  
 began about the 11th of October, 1878, and culmin-  
 ated on the 15th of November, 1878. I don't know 1183  
 that I saw him more than two or three times and  
 that was on the street. I never heard him cough  
 so that of course I could not have any personal  
 knowledge as to whether when he did cough he at  
 the same time raised blood. On this night of the  
 15th of November I arrived at the Spaulding House  
 between half past eleven and twelve o'clock. I  
 cannot give it nearer than that. When I say the  
 undertaker had not arrived I mean by that only  
 that I don't remember that he came into the room  
 until I met him at the door; all I mean is, that  
 I met him at the door; when he came he had 1184  
 the tools of his trade with him. I did not see  
 either of the doctors Burr in the room; I do not  
 say that when I got there Warren Spaulding was  
 there; I didn't see him when I got there; there  
 was no one in the room but Mr. Charles A. Hull.  
 Mr. Hull was sitting on the west side of the room,  
 if I get the points of compass rightly, a little north  
 of the stove. (Referring to diagram Exhibit 51.)  
 This is the bed room, and that is the stove and here  
 is the door where you go in and Mr. Hull was  
 about there (indicating); he was at the further side  
 of the sitting room from the bed room when I came  
 in and was sitting down. He was doing nothing, 1185  
 resting, I should say—I don't remember how—he  
 was sitting in a chair, that is all I remember about  
 it, he was facing the stove. I had some conversa-  
 tion with Mr. Hull and immediately passed into  
 the bed room. Mr. Hull did not go with me. I  
 suppose he remained in his chair. I had been in-  
 formed at the time I went into the bed room that  
 Mr. Dwight was dead. I think I was cool. There

was a fact in connection with his death that led me to go into the room. There was no fact in connection with the death that led me to make any examination of his neck. The examination of his neck was close and marked. That examination was not close and marked on account of something that had  
 1186 been said to me. It was not on account of some fact of which I had been informed.

Q. Was it on account of something that was then stirring in your own mind? A. I hardly know how to answer. If I comprehended the question. If I may explain that.

Q. I want a categorical answer? A. I will say yes, then. That did not lead me to investigate any other part of his person; it did not lead me to any investigation of his hands or his feet, or the color of his face; my recollection is that the body was bolstered up with pillows at an angle of about  
 1187 forty-five degrees; the face was a little pale, but quite natural; I was examined as a witness on the coroner's inquest; I cannot tell that I expressed in my testimony there the same language substantially now used in describing the color of his face.

Q. Is your recollection of that color now more vivid or less vivid than it was at the time you were examined then, a few months after his death? A. I should say it was less vivid now; that would be my judgment.

Q. Isn't the expression you made use of at the Coroner's inquest: "He was very pale; there was an entire lack of color in his arms and hands; very  
 1188 pallid"? A. I don't remember that expression; that was five years ago; I have no recollection that that was the expression that I used.

Q. Is it the fact that he was very pale; that there was an entire lack of color in his arms and hands; very pallid? A. I don't remember it so, now; if I so stated at the Coroner's examination, I should say it was correct; it was only a few days or months afterwards.

Q. Wasn't it more than a few days after the death that you so testified? A. I can't tell.

Q. Then your recollection and memory as to how long it was after the death of Walton Dwight that you testified is not good? A. I should think only a few days, maybe a few weeks; I don't remember how soon the Coroner's inquest followed his death. 1189

Q. Is your recollection so vague on the subject that you don't remember it was five months after he died, and the spring following the fall of his death? A. I don't remember it.

Q. Do you remember testifying to this in answer to a question. "What was the expression of his countenance?" A. "I can't describe it in any other way than that there was a death look in it." A. I don't remember that answer.

Q. Do you say that your recollection is now that his knees were drawn up only about three inches? A. They might have been a little more than that; that is, his feet may have been drawn up so it brought it up six inches. They were drawn up some, and they had settled back, the exact extent, I can't say. 1190

Q. Did they settle back during your observation of them? A. No.

Q. How do you know they had been drawn up and settled back? A. From the appearance of the bed clothes.

Q. Did you not testify on the Coroner's examination "his feet were drawn up quite a good deal, his hands were thrown over inside his knees"? A. Possibly. 1191

Q. Is that your recollection? A. I don't recollect.

Q. You say his hands were warm and soft; was that true? A. I will say that is my recollection.

Q. And the other portions of the body you felt? A. Yes; but I felt no portions except his hands and face.

Q. Did you know at the time you saw Mr. Dwight

as to whether his clothing had been changed since death? A. I didn't know; I didn't know anything about that.

Q. Now, in describing the band of the shirt around the neck, what do you mean by a smooth band? A. I mean it was nicely laundered, and was not wrinkled.

Q. Have you, since your testimony given before the Coroner's inquest, had any conference with the lawyers representing the executors in regard to that testimony? A. Not in regard to my testimony; but I had conference with them—I better qualify that by saying, not in regard to the testimony—I had a conference with Mr. Newton and Mr. Chapman; I don't think I have had frequent discussions with other persons in regard to what I saw on that night. I have had conversations, perhaps half a dozen. I have made statements—not public, I should think.

Q. This band of the shirt—may have been an inch, and it may have been three-quarters of an inch wide—that would be my judgment. I can't tell whether it was one thickness of linen. I should think more than that; it was a good width band. My recollection of it is that it appeared like a good, substantial band. I didn't examine it to see whether it was more than one thickness of the linen. I should think it was nothing more than an ordinary shirt band attached to a shirt. I think there was a light in the bed room and also one in the sitting room. I think it was gaslight; it was turned up so it was very light in the bed room. Not very light in the sitting room; In the bed room the gaslight was, I think on the south side. That I can't be positive of; my recollection is—and my recollection is not clear upon that subject—that it was on the north side of the room; on the side of the room across from the bed. By the window. That would be my impression. I have no recollection about

the number of burners lighted. I paid little attention to the room.

Q. You have got the room nicely lighted as you say, from a light in the corner of the room that you don't remember, but think was over by the window. Will you swear that there was any gaslight in that bed room at all? A. I will swear positively 1195 that the room was lighted.

Q. Will you swear positively that there was any burner lighted at all in that room when you were in there? A. I have no distinct recollection of looking at the light.

Q. You just told me you saw it was turned up high? A. No, I didn't intend to.

Q. Will you tell the jury under oath that there was any gaslight burning in the room at all? A. I will say to the jury that I have no distinct recollection about what the light was, excepting that it was light.

Q. Will you say under oath there was any gaslight whatever burning that night in the bed room when you were in there? A. I will not say there was or was not--I can't. I have no positive recollection of seeing Mr. Dwight since the time I met him in front of 75 Court street. My impression would be that that was about the middle or fore part of October; I couldn't say that it was between the 10th and 18th. On the night of the death of Colonel Dwight, I have no recollection that I noticed whether his hair or beard had been cut; I didn't notice any change in him from what he usually appeared; he usually wore a full beard, 1196 not very long; wore his hair about medium. 1197

Q. You noticed no change that night when you were there and looking at his head? A. Well, he didn't look exactly--nothing that I remember: nothing that impressed me.

Q. You are now one of the editors or proprietors of a daily newspaper printed in the City of Bing-



hamton, called the "Binghamton Republican" are you not? A. I am one of the editors.

Q. Are you the gentlemen who has been writing articles upon this Dwight trial that have appeared several times in the columns of that paper? A. I have written some articles about the Dwight trial  
1198 that have been published in that paper while this trial has been going on.

Q. And that paper of which you speak has been sent to the village of Norwich, during this trial, in large quantities, has it not? A. I have no doubt of it.

Q. Is that printing establishment at which the Binghamton "Republican" is printed, the establishment which has also printed a paper headed or purporting to be a copy of the last will and testament of Walton Dwight, and with certain headlines characterizing that document? A. I have no knowledge of it.  
1199

Q. (Paper handed witness.) Was this document printed in the office of the daily "Republican"? A. I can't tell you.

Q. Do you know from the appearance of it? A. I can't tell now.

Q. Haven't you seen a similar copy in the office of the "Republican"? A. I have not.

Q. Mr. Van Vredenburgh, do you mean to say simply that that document could have been published in the office of the "Republican" without your knowledge? A. Yes.

Q. Now, do you not know, and are you not conscious in your own mind, that a document has been published in the office of the "Republican" for the purpose of being sent to Norwich to be distributed?  
1200 A. I don't know anything about that document; I never heard of it until Mr. Larocque exhibited it here in Court, and I never had one in my hands until you just handed it to me.

Q. Now, the question is, are you not conscious

that has been published in the office of the "Republican"? A. I am not.

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ELIAS AYERS, called as a witness on behalf of the plaintiffs, in rebuttal, further testified as follows: 1201

*Examined by Mr. Newton :*

I reside in Binghamton ; my business is that of an undertaker ; I knew Walton Dwight in his lifetime ; I first became acquainted with Mr. Dwight about the time his father died ; that was, I think, ten or twelve years ago. From that time until the death of Walton Dwight, I was intimately acquainted with him. On the night of his death, I went to the room at the Spaulding House ; I was called about half past eleven o'clock ; I went as soon as I could get ready ; my place of business and residence was at that time—it may be a quarter of a mile from the Spaulding House. Arriving at the house I entered the front door, and went into the room where the body was. I went directly to the house—at the cottage—directly to the front of the cottage ; I think I met Mr. Van Vredenburg, the gentleman that was just on the stand, at the door, and I saw Mr. Warren Spaulding, the proprietor of the hotel, and Mr. Hull, in the room ; there were no other persons in the front room and bedroom than those, to my knowledge. The body of Walton Dwight, when I arrived there, was lying in bed, dead. The body was in the middle of the bed. I didn't do anything till they got things prepared for me to do with—a dish of cold water, towels, soap, and his clothes that I wanted to put on. Then I undressed him, washed him, put on his clean clothes, pants, stockings and shirt. In undressing, garments which he had on him and 1202 1203

which I removed were a day shirt and drawers. I washed him all over with soap and water, and in so doing he was entirely uncovered by me; I noticed his neck among other things; I washed that entirely around the neck.

1204 Q. Was there any crease or mark as of a rope or otherwise upon his neck? A. No.

Having washed and dressed the body it was put upon a board, in the bed room, and then carried into the front room and placed on stools. A book and two pillows were then under his head; the head was elevated pretty high. I then left after I had wet a cloth and laid it on his face. I completed this service about one o'clock at night, and then I left. I next saw the body of Walton Dwight about nine o'clock the next morning, in the same room I laid it out in; his face was bloated some then. The body was on the board just where I left and as  
 1205 I left it. Before leaving the body I made provision to prevent the dropping of the jaw by putting on a "chin rest." It is generally used in those cases—calculated to hold the chin close to the upper jaw. That was put on the first evening. It was put on after I left the body on the board, and that was upon the body when I came at nine o'clock the next morning. That morning I prepared the body and put it in ice. I took it off of that board and put it in a cooler. I put it into the cooler between half-past ten and eleven o'clock that morning—Saturday. Mr. George Edwards assisted me in putting it in the cooler. In that cooler besides the  
 1206 body there were a board, head-rest, ice-pan over in front of the body, and ice. I laid his head in the cooler on an iron rack, leaving the head elevated in the neighborhood of 45 degrees, I should think. That is the ordinary position of placing a body in the cooler. The body remained in the cooler from eleven o'clock, or the time I put it in—from half-past eleven or half-past ten to eleven o'clock—until Monday morning at eight o'clock.

In the meantime I examined the body night and morning, filling the cooler with ice and wetting the face. Eight o'clock Monday morning I was directed to have it out. I couldn't tell from whom that order came. The body in the cooler was in the front room of the cottage. In moving it there were a number of persons who assisted me. I couldn't tell who. I think Mr. Edwards was there and others. The body was then carried in the rear of the Spaulding House, in a portion of a barn or wagon house—carried in the cooler, and remained at the barn. It was taken out of the cooler and put on the same board that he was laid out on in the first start, and that was put on the top of the cooler. There it was dissected. The body that was dissected was the body of Walton Dwight. At the time of that dissection there were slight creases on the neck. 1207

Q. Were those usual in cases of dead bodies? 1208

Objected to as incompetent. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. They were not. At the time I removed that body from the cooler, and when the dissection occurred, there was no discoloration around the creases; I felt of the creases; my attention was called to it by Dr. Swinburne; the feeling was nothing more than it felt cold; the crease was nothing more than a little wrinkle here on the neck. 1209  
There was no wrinkle around in front at all across the throat; there was no discoloration whatever around the throat. Dr. Delafield was engaged in dissecting, and as they proceeded notes were taken. Before the commencement of the dissection there was something said about these creases. I remember Dr. Ayers being there. I was sent for. Dr. Ayers made a remark; Dr. Swinburne was present

at the time. Upon Dr. Ayers' remark Dr. Hull made an answering remark It was about one o'clock that day when they got through, I think. Then the body was sewed up and put back in the cooler, portions having been removed; the remaining portions that had  
 1210 been removed and not carried away were all thrown hit and miss into the body, including the brains. Then we carried the body back into the cottage where I had taken it from, and put it in the cooler. In the meantime, in order to preserve the body or prevent bad odor, I had poured down his throat about a pint of chemical stuff I use to preserve the body, made of arsenic, carbolic acid, corrosive sublimate, camphor and other poisonous stuff. This was on Monday; the funeral was on Tuesday. I put that stuff into the body after the doctors got through, and before I had again placed  
 1211 the body on ice. I next removed the body Tuesday morning, when I dressed it and put it into the casket. It was then taken from the house to the church on the funeral occasion. It was exposed at the church; then it was carried to the Spring Forest Cemetery, where it was put into a brick vault and buried.

About five months after that burial I directed the body dug up by the employees of the cemetery. I removed it from the grave with the employees of the cemetery. With me was James P. Tully; the coroner was there also. Having exhumed the body, we placed it on a wagon and took it to the barn. I made  
 1212 this removal under the directions of the coroner of Broome County. I opened the casket, and what was left of Walton Dwight was there. I took the lid off the casket. Scales were sent for, and the casket and body were weighed; then it was taken out of the casket and laid on a couple of boards near by on the barn floor, and the casket weighed and there again subjected to examination. There were several doctors present there—Dr. Swinburne, Dr. Sher-



man, Dr. Daniel Burr, Dr. Orton, Dr. Richards, the Coroner, Dr. Spencer, Dr. Jackson, and other doctors I cannot call to mind. I do not know Dr. Hyde; he might have been there and I not know it. Outside of the doctors, there was a considerable attendance at the barn; this Mr. Freeman, that, I have seen here on the stand, was there; Col. Jones I think was there; I think Mr. Daniel Richards was there—he is a lawyer at Binghamton; there were several others there, that I can't call to mind; I think Daniel Magone was there, and Mr. Beach a stenographer of my city; outside of those there was quite an attendance there; forty or fifty persons were there; there was no exclusion of persons coming there. At the time I replaced the body in the casket after the first dissection I placed a couple of newspapers across the front of the body; upon the second dissection, those were removed with difficulty; I found them there upon taking him up, and found him just as I had buried him in that regard. When the body was exposed at the time it was taken up, five months after burial it was covered with mold from one end to the other; that mold covered the neck and the creases in the neck the same as elsewhere; there was no difference in the discoloration around the creases from that elsewhere on the body. 1213 1214

Q. Did you then notice the creases to which attention was called at that time? A. I saw Dr. Swinburne point to the creases.

*Cross-examination by Mr. Russell:*

1215

I am not one of the persons named in the will of Mr. Dwight, and have not been at any time, since the death of Mr. Dwight, in the employ of the executors of his estate; in my undertaking capacity I was sent for under the direction of Mrs. Dwight I suppose.

Q. And your subsequent services at the post-

mortem examination on Monday, the 18th of November, and at the coroner's inquest in April, 1879, by whom were you employed? A. The services at the first autopsy came under my first employment; those connected with the second came under the direction of the coroner; in the latter case I made out my bill to the coroner, or to the county; I think it was a county charge. From the night of the death of Mr. Dwight, until his first burial was completed I was acting for the estate. At the time I went to the Spaulding cottage on the night of the 15th of November, there was no fact then existing of which I had knowledge, which led me to make a more careful examination of the body of Walton Dwight than I would have made otherwise; at that time I had a pretty fair range of business in undertaking; it was a matter of every day occurrence.

Q. And you had no occasion or reason for treating the body of one dead person in any different or other manner from that of another? A. Some required a little different character of attention from others, that is all. I had no special fact or circumstance that led me to examine the body of Mr. Dwight that night, which would not have led me to examine the body of any other person, and I paid no more special or particular attention to the examination of the neck than I did to any other part of the body. I had nothing in my mind that attracted my attention to the neck that night, and I noticed nothing that night which caused me to look at the neck particularly. In making the preparations I made that night, in the middle of the night, I was about an hour; might have been a little more, and it might have been a little less; that is not a sufficient time to make a thorough and complete preparation of that body for interment—the body was not complete for interment.

Q. But all of the preliminary preparations were

made, weren't they? A. All that was necessary that night; and that was my only object in making such examination of the body as I did. Mr. Dwight wore a full beard; I don't think he wore a beard that covered his face more fully and closely than the one which I myself wear, but it was what I would call full, and, for the length of it, a heavy beard. At the time I made the post-mortem preparations his beard had been trimmed. It was shorter than mine, might have been an inch and a half long. The beard was not of particularly coarse fibre. No portion of his face or neck had been shaved that I know of. I didn't notice whether there had been any hair shaved on the back part of his neck, or of his beard, on the neck or throat. 1219

I have the "chin-rest" I referred to here (producing same); this is the identical article that I put on. 1220

The chin-rest referred to was introduced in evidence, and marked Exhibit No. 99.

The tension of this instrument is put up and down, vertically. The top part is put on the crown of the head and the bottom part down under the chin. You couldn't make it stay on the head putting it up and down. That was placed upon the head of Mr. Dwight after I got him on the board, perhaps an hour afterwards. Mr. Charles Hull assisted me in my work. George Edwards assisted me in putting him into the cooler next morning. Charles Hull assisted me that night, and George Edwards assisted me next morning. At that time I don't know what George Edwards was employed in; he had been a former clerk in the Dwight House. The crease that I say I saw in the neck of Mr. Dwight I noticed first after I had taken him out of the cooler, and they drew my attention to it. 1221

Q. Then you didn't observe it the next morning—

that is, the morning of Saturday, November 16th ?  
A. No.

Q. Did you observe whether the crease or the furrow was on both sides of the neck ? A. I did not.

Q. Then you can't say, can you ? A. No.

1222 Q. Was it at that time a heavy indentation ? A. No, it was not.

Q. Did you ever notice it when it was, to your remembrance, a heavy indentation ? A. No.

Q. Did you make any physical examination of that indentation or furrow yourself, with your finger ? A. Yes, I did, on the morning of the first autopsy, not before the doctors got there, but after my attention was called to the furrow. I put my finger in the furrow ; I felt of it with this finger (indicating index finger of right hand) ; I put it in the furrow on the left side ; I did not try the right side ; I didn't go on the right side to see. I did not, at any time on any occasion, pay any attention or give any notice to the furrow that was on the right side of the neck.

The pint of chemical stuff which I poured down the throat after the body was dissected the first time was a solution of arsenic, carbolic acid, corrosive sublimate and camphor.

Q. What steps were taken by you to allow this pint of chemical fluid to go into the cavity of the chest for preservation of the organs ? A. I poured it down ; I succeeded in getting it into the other portions than the stomach, because the inwards  
1224 were all taken out, from one end to the other. The gullet or œsophagus had been cut across, and there was nothing then to hinder the chemical fluid from going into the organs of the chest so the heart and other tissues could be preserved. I think Dr. Bassett was at this Coroner's inquest ; I didn't mention him in mentioning the names, for I didn't think of his name. I am not related to Dr. Ayers that I know of.

I swear that this chin-rest is the precise instrument that I put under Dwight's head, except that there has been new rubber put upon it ; the elastics upon it are new ; the two pieces top and bottom are the same ; with that exception that is the same instrument produced at the coroner's examination ; the old elastics that were on at the time this was put on Mr. Dwight were of the same kind as these ; they were not of the same color as these elastics ; I could not tell how soon after the death of Dwight I changed them ; I cannot tell within a year or two of it ; I could not tell how old the elastics were that I had in the frame at the death of Dwight ; I had changed them two or three times before ; I can't tell how old they were. 1225

*Re-direct-examination by Mr. Newton :*

Q. How were those creases such as you saw in the neck of Mr. Dwight formed ? 1226

Objected to on the ground that the witness is not shown to have sufficient skill to determine ; nor has he stated any special examination which led to his opinion.

*The Court.*—He may state what caused this particular crease.

To this ruling the counsel for the defendants duly excepted.

Q. Can you tell what caused this crease in his neck ? 1227

Same objection, ruling, and exception.

A. Yes ; by elevating the head.

*Re-cross-examination by Mr. Russell :*

I elevated the head forward ; elevating the head



forward would cause a crease on the upper part of the neck.

Q. Didn't I understand you to say on your cross-examination that you did not examine the crease on the right side of the neck? A. I did.

Q. Then how do you tell what formed that  
1228 crease on the right side? A. I can tell.

Q. Can you tell by your own personal observation of this neck? A. Yes.

Q. How can you tell when you didn't see the crease on the right side of the neck by your own personal knowledge as to what caused it? A. If it was not perpendicular and straight, one crease would be higher than the other.

Q. Is that all the means of knowledge you have upon that subject? A. Yes, sir.

Q. And that is all the knowledge of which you testify of the cause of the crease which you yourself did not see? A. Yes, sir.  
1229

Q. When you put the head upon two pillows and a book did you put it straight or turn it? A. I don't know; I meant to have it straight; sometimes we do not get it so.

Q. Your recollection don't extend to that? A. No.

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JOHN SWINBURNE, re-called on behalf of the plaintiffs, further testified as follows:

*Examined by Mr. Newton:*

1230 Q. At the first examination, before the dissection commenced, did you before Mr. Ayers and the Drs. Burr and various other doctors, and Mr. McDonald and Mr. Downs and the persons around that body, hear Dr. Ayers say or suggest that the creases in this neck were probably made by bending the neck backward and forwards, or words to that effect?

Objected to as incompetent and calling

for hearsay evidence, and also as asking for a conclusion of the witness as to what was said. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. No, sir.

1231

Q. Did you before the dissection was commenced, and while the body was being outwardly examined, say in the presence of these gentlemen that the creases in the neck were probably made by bending the head and neck backward? A. No, nor anything to that effect.

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ELIAS AYRES, re-called on behalf of the plaintiffs, further testified :

*Examined by Mr. Newton :*

1232

I know Dr. Swinburne.

Q. Did you hear him say, upon attention being called to the creases in the neck, that they were probably made by bending the head and neck backward?

Objected to on the ground that it is not identical with the question propounded to Dr. Swinburne, and as calling for hearsay evidence.

The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

1233

A. I did.

*Cross-examination by Mr. Russell :*

Q. Was this what Dr. Swinburne said : " Dr. Swinburne notes a heavy indentation extending upward and backward from the os hyoides to the right, around back of neck and on the left side

below the thyroid cartilage running upward and backward to an angle of about 45 degrees," was that what Dr. Swinburne said? A. No.

Q. Did you hear that remark made by him at all—on your oath, now? A. I heard him say it might be so.

1234 Q. Did you hear him say that? A. I couldn't swear it was that same language.

Q. The substance of that language? A. The substance of that language it was.

Q. You heard him say that in substance? A. Yes.

Q. That he noted a heavy indentation on the neck? A. I do not recollect a "heavy."

Q. You don't recollect the word "heavy." Do you say that he didn't use the words "heavy indentation"? A. Yes.

Q. Do you swear he didn't, and you are positive of it? A. I am.

1235

*Re-direct-examination by Mr. Newton :*

Q. When this question of these creases in the neck was called up, were you called from outside to come forward? A. Yes, and they might have said that before.

Q. And while it was under discussion you came to the body? A. Yes, sir.

Q. You came in while it was under discussion? A. Yes, sir.

1236 *Re-cross-examination by Mr. Russell :*

Q. What you mean to say is, you came in in time to hear the latter part of one sentence and not the forepart of it? A. Yes, sir.

Q. Then why did you say you heard him say anything about the indentation? A. Because he asked me when I came in and I told him.

Q. Wasn't that the only time he spoke of

indentation? A. The time I came in was the only time.

Q. Was he talking to the doctors when you came in? A. They were talking together among them.

Q. Was he speaking to you? A. Yes.

Q. What were the first words you heard him say about that? A. He called my attention to it. 1237

Q. What were the first words you heard him say? A. He asked me what made that indentation or crease.

Q. That was a remark addressed to you and not the other doctors? A. Yes.

Q. Do you say he used the word crease? A. I don't know as he did.

Q. Didn't he use the word indentation? A. I couldn't say.

1238

CHARLES A. HULL, called as a witness on behalf of the plaintiffs in rebuttal, and sworn, testified as follows :

*Examined by Mr. Newton :*

I am 33 years of age and reside in Binghamton. I knew Walton Dwight. I knew him along about 1871 or 1872, that was the first I knew of him. And from that time until the time of his death that acquaintance continued during those years I lived in Binghamton. I went there to stay permanently about the 1st of January, 1872. I have remained a resident of that place from that time until this, with the exception of one year or a year and a half. I was present at the time of the death of Walton Dwight. That night I went to the house where he was about 9 o'clock. Prior to that I had been a partner with Mr. McDonald, practicing law. I had 1239

practiced law then about three years. I had then been in partnership with Gilbert C. Walker—No one else in Binghamton.

Q. In going to Mr. Dwight's that night who did you find in his room? A. I found Mrs. Dwight and Mrs. Owen there. They retired about 10 o'clock.

Q. During the time you were there and before they retired was any one present in the room, if so, who else? A. Dr. Daniel S. Burr was in there, in the room with Dwight at one time in the evening. When Dr. Burr was there I was present in the bed-room. I am not entirely clear whether Dwight was sitting up or in bed when I went there. My recollection is he was not up when I got there that night, and wasn't up again.

I reached there about 9 o'clock. A short time after Dr. Daniel S. Burr came in, and while there  
 1241 inserted a hypodermic injection of morphine. After he had gone Mrs. Dwight and Mrs. Owen were there in the sitting room, and Mrs. Dwight, I think, went into the bed-room to bid him good night, and she told me where I would find them in case they were needed, and to rap on the door on the opposite side of the hall, and retired. That was shortly after 10 o'clock as I remember it. I stationed myself in a chair near the door leading into his bed-room and this door was partially open, and I sat there. During the time that I sat there  
 me at the time the Colonel called me and said his head  
 1242 was feverish and wished me to saturate a cloth in bay rum and put it on his head and I did so. And at another time he called for some water and I gave him a swallow of water. After that he seemed to sleep, and before at different times, I thought he was sleeping, but of course it was uncertain and I did not disturb him. Along about between 11 o'clock and half-past 11, I heard him gasp for breath as it sounded to me and he said Charley, and called to me and I went in to his side as quick



as I could and put my hand under his head and raised his head up and gave him some brandy, and then I ran across the hall as rapidly as I could to Mrs. Dwight's door and rapped on it very loud and went back to the bedside again and I think I administered brandy a second time, then I felt of his pulse and in a short time Mrs. Dwight came out only partially dressed, and I asked her to touch the bell for Mr. Spaulding and she did so. In a very short time Mr. Spaulding came up there and was followed by Mrs. Owen, Mrs. Spaulding's brother and his family, consisting of his wife and daughter. 1243

Q. During the night prior to the death did he eat anything, and if so, what? A. He ate a cracker. At one time he said he had a new method of trying to keep food down and he reached over to the stand that was sitting near his bed and took a cracker and bit it, I don't know whether he swallowed it or not, but I think he did ; I think that was about 15 minutes before I observed his gasping and calling "Charlie"—that is my recollection now. I gave him some water and I can't tell whether I gave him the water or he took the cracker the last thing I heard from him, it was one or the other. While I was there he did not take any other food than this cracker; it was a common oyster cracker; they were on a dish on his stand next to his bed; he helped himself. I approached him when he called. I did not disturb him; I looked in on him occasionally, but I didn't speak unless I was spoken to. The chair I occupied was very near the door within two or three feet any way of the door leading into his bed room. From the position I occupied my eyesight covered his bed; I was about eight feet from him. Since this matter arose I have measured that distance with Mr. Chapman; I can speak exactly from that measurement, but I did not exactly, in my state- 1244 1245

ment, eight feet and seven inches was the exact measurement, I think.

Q. From the time Mrs. Dwight left him until he died, or until you went and called her, was he at any time out of the line of your sight? A. He was not—I would not say at any time; I might  
1246 have stirred in the room, but I think I sat in that chair all, or nearly all, of the time.

Q. And your face in what direction? A. I was facing in the direction of the bed. I did not sleep any.

Q. State whether it was possible for any person to have entered that room that night without your knowledge? A. It was certainly not possible.

Q. Did he during that night take anything from outside of that bed himself excepting the cracker, from the time you went there until he died?

1247                   Objected to. The Court overruled the objection, to which ruling counsel for the defendants duly excepted.

A. He did not.

Q. You mentioned, Mr. Hull, that he gasped, or that you heard a gasp; state whether he continued to gasp? A. He did, until after I had given him the brandy, and he gasped until I left the room to call Mrs. Dwight.

Q. Can you state whether he did after you returned? A. I don't think he did. He swallowed the brandy. After Spaulding came there and Mrs.  
1248 Dwight, Mr. Spaulding gave him some ammonia—I can't say whether he gave him brandy or not.

Q. Can you state whether the ammonia was swallowed? A. It went down. Mr. Spaulding pinched his tongue several times.

Q. In what position was he when that was done, lifted up or lying as he was then? A. He was lying in the same position.

Q. And what was the position that Walton

Dwight occupied in the bed that night when you got there? A. He was lying propped up on some pillows—I cannot state how many, definitely.

Q. Was the position altered at all that night?

A. It was not.

Q. And state whether that condition of the pillows remained until he died? A. It did. 1249

Q. Was there any rope in that room that night that you saw anywhere? A. I didn't see any.

Q. Was there any cord? A. I didn't see any.

Q. Was there any about his neck at the time you went and gave him the brandy? A. No, sir; there was not.

Q. Could you hear him breathe; state whether you could or not, during the night while you were there? A. I could.

Q. While you were in the chair? A. Yes.

*Cross-examination by Mr. Russell :*

1250

Q. In giving your testimony is there any cause for hesitation? A. Why no, no more than to—

Q. I insist upon a direct answer whether there is any? A. I think there is. That cause is not connected with the death of Walton Dwight nor with the events of that evening. I am manufacturing cigars at present. The first occupation I began with when I commenced business for myself was publishing a newspaper; the next was practicing law; the next manufacturing cigars, and all within the space of eleven or twelve years. I was publishing a newspaper about a year in Bingham- 1251  
ton; the paper was the "Democratic Leader"; I did not publish it alone, but in connection with other persons; I had studied some law before and studied some afterwards; I practiced law for six or seven years; I tried cases in the Courts other than Justices' Courts; I left the practice of the law the 1st of January, 1882; during the practice of the law I was not attorney for Walton Dwight; I was not

connected with him in a business way at all ; I was one of his assignees in bankruptcy.

1252 Q. Then why do you say you were not connected with him in business in any way ? A. I do not consider that connection in business ; I did not personally have business transactions with him as assignee : I personally had nothing to do with him although I was his assignee in bankruptcy ; I did not have anything whatever to do with the management of the estate.

Q. Then your position as assignee was merely an idle one ? A. Yes, I think so ; I think Mr. Pine was the attorney who conducted the trial or proceedings in bankruptcy of Walton Dwight ; I can't say who, aside from the attorney, conducted it : I don't know anything about it ; I left the practice of law in January, 1882, and since then I have been manufacturing and selling cigars, and that is my 1253 present occupation ; I reside at Binghamton ; I think I have a belief in the existence of a Deity.

Q. Don't you know ? A. I do believe in a Deity.

Q. Do you believe in a future state ? A. Yes.

Q. Why do you hesitate in answering me ? A. I am considering the question.

Q. Do you believe in any other than a temporary punishment for anything like false testimony ? A. Yes ; I believe in more punishment ; I don't know as I understand the question as to what you mean by temporal punishment.

Q. Punishment in this life ? A. Well, I am not certain whether I do or not.

1254 Q. Don't you know whether you believe in such a thing as punishment besides being punished in State's Prison ? A. Yes, I believe in more punishment than that.

Q. Do you believe in any punishment that extends beyond this life ? A. Well, I am not certain as to that.

Q. Then, so far as your present condition is con-

cerned, there is no punishment whatever that you know of—that you feel certain of—for anything like false testimony, excepting as it is confined to this world? A. I am not certain of it; no, sir.

Q. Do you recognize the binding obligation of an oath? A. I do.

Q. Anything beyond the same obligation that would attach if you were not sworn? A. Yes, sir; there is a sacredness about an oath that has its effect on me. 1255

Q. When you took your oath in Court here, did you take it on the Scriptures? A. I have read the Scriptures some.

Q. Did you take your oath to-day upon the Scriptures? A. I did.

Q. Did that add any additional sanctity—the book you took your oath on? A. I think I would tell the truth whether I took it on that or not.

Q. Did it add any additional sanctity the fact that you took it on the Holy Scriptures? A. Yes, I think it did. 1256

Q. Do you recognize those Scriptures as holy? A. I don't know what you mean by holy.

Q. Don't you know what the term "holy" means? A. Yes, I know in what sense it is used.

Q. In the sense it is used according to what you know, do you believe in the holiness of the Scriptures? A. I think I do.

Q. Don't you know whether you do or not? A. As I told you, I am a little uncertain.

Q. You are a little uncertain about it? A. Yes, sir. 1257

Q. You are uncertain whether you have any belief as to the sacredness of that book, is that what you mean? A. Oh, I have a belief—a certain belief.

Q. I am not asking whether you have a certain belief or not, but I am asking whether you have any belief of the holiness of the Scriptures—of that book called the Holy Scriptures? A. I have.

Q. You think you have? A. Yes, I think I have.



Q. You believe, then, that the book is something more than the work of a mere man? A. I can't say that I do.

1258 Q. Then why do you believe there is any holiness or inspiration about the book, if it is nothing more than the work of a mere man? A. I don't know that it assumes to be anything more; I think it was conceded to be so written.

Q. You say under oath that you don't know that the book assumes to be more than the mere work of man; did you mean to be understood as saying that? A. I consider it was written by man and so conceded.

Q. Don't you know that the question is whether it is the mere work of man, like any other book, or something higher and beyond the work of man? A. I don't know whether it is or not.

1259 Q. Don't you know that the distinction between the two things that I suggest to you is, whether that book is beyond man, and is written by a higher power, or dictated or inspired; do you believe in the book in that sense? A. I doubt very much whether it was inspired.

Q. Then, recognizing it as a mere work of man, does the fact that you took an oath on the Bible give any additional sacredness to your oath? A. Well, my doubts in relation to the matter.—

Q. Answer the question? A. I cannot answer that.

1260 Q. Do you regard it as a mere form, the taking the oath on the Bible? A. Not wholly so; I think there is enough of doubt about the book, so I think it has more or less effect on me.

Q. Then the doubt which exists about the authenticity of the Bible imparts an additional sacredness in your estimation? A. I think so; if I was certain it was not inspired I would have less awe of it, I will say that.

Q. Do you believe in the existence of a personal God? A. I cannot say that I do.

Q. Then do you believe in any overruling power that rewards and punishes aside from those punishments inflicted in this world? A. I am not entirely clear upon that; I have no fixed belief on it.

Q. Do you believe it or not? A. I have answered the question once; I say my belief is not fixed.

1261

Q. Do you believe in an overruling power that rewards and punishes, aside from the punishment that is inflicted in this world? A. I can only say that I am not decided on that question.

Q. Then you don't know? A. Not for certain.

Q. Don't you know what you believe? A. I think so.

Q. Then I am asking simply whether you know there is an overruling power, or whether you believe there is such a power? A. I am not entirely clear whether I believe that or not?

Q. Have you any belief on the subject? A. Not well defined.

1262

Q. Have you any? A. Some, sir.

Q. You believe it some? A. I didn't say that.

Q. You have some belief, and is that "some belief" you speak of—is it that there is such a power, or that there is not? A. I believe there is something that rules the world; of course whether it is a personal God or not I am not prepared to speak.

Q. Do you believe in a moral punishment other than a physical punishment from the law? A. I do, most certainly.

1263

Q. Do you believe that moral punishment comes from a personal higher power? A. I am not certain as to that.

Q. I am asking whether you believe it or not? A. I am in doubt on the question.

Q. You are in doubt whether you believe it or not? A. Yes, sir; I am in doubt whether I believe it or not.

Q. When was the last time you saw Walton Dwight in his lifetime before the evening of November 15, 1878? A. I was there Wednesday night before; that would be two days before, either two or three days before.

Q. At whose invitation did you go there on  
**1264** Wednesday night? A. I don't think I was invited there Wednesday night.

Q. Did you go there of your own free will? A. I did.

Q. Did you have a conversation with Walton Dwight that night? A. I think I did.

Q. Did he give you any special reason why he wanted you to sit up with him? A. He did.

Q. What was it? A. He thought I would be cool in case he was—

Q. In case anything should happen? A. I don't  
**1265** know that he said that—in the case he was sick and in the emergency he thought I was cool and would not get excited.

Q. Didn't he say he wanted you because he thought you would not get excited in case anything should happen? A. I can't say the language was that.

Q. Can you say that was not the language? A. I don't think it was.

Q. Wasn't that your testimony before the coroner's jury? A. I didn't assume then to give his exact language.

Q. And didn't you state in substance before the coroner's jury that he said to you that he wanted  
**1266** you because you would be cool in case anything should happen? A. I think I stated something like that.

Q. How long did you sit up with him on Wednesday night before he died? A. I didn't sit up with him at all on Wednesday night before he died.

Q. How long did you stay with him that evening? A. A very short time as I recollect it.

Q. What do you mean by a short time? A. A half an hour or such a matter.

Q. Were you alone with him? A. No, sir.

Q. Any of the time? A. I don't think I was that night.

Q. At what time did you go there? A. I think I went up after supper to see if he wanted me to stay? 1267

Q. Did he say he didn't want you to stay that night? A. He did.

Q. Did he then tell you what night he did want you to stay? A. I think he did, yes.

Q. What night did he say to you he did want you to stay with him? A. I think he said Friday night the 15th.

Q. Friday night the 15th of November? A. Yes.

Q. And did he designate to you the hour he would like to have you come? A. No, sir; he did not. 1268

Q. Did he say he expected anything would happen to him that Friday night? A. He did not.

Q. Did he give you any reason for asking you to come Friday night? A. That's the time when his chills, as he termed it, would return in case it came at all.

Q. He said at that time that that was the night his chill was going to recur? A. If it came he didn't say it would.

Q. Friday night was the night on which his chill was going to recur again—you are sure of that? A. Yes. 1269

Q. Between Wednesday night and Friday night did you see Walton Dwight? A. I did not.

Q. What were you doing in the meantime? A. Attending to my business.

Q. What was that business? A. Practicing law, I was practicing law during those two days; I was in my office.

Q. What hour of the day or evening was it on

Friday night you came to him? A. About 9 o'clock.

Q. Was that the hour he designated? A. He didn't designate any hour.

Q. Was that hour selected by you? A. I don't know as it was selected; I went up in the evening.

1270 Q. Then there was no especial time you intended to go? A. I intended to go up there that evening; I didn't set any time.

Q. Was there any especial hour fixed in any way that you were to go? A. No, not that I recollect of. I went there between eight and nine; it was nearer nine than eight is my recollection—about nine o'clock as near as I can remember, now.

Q. Can't you tell within half an hour when you arrived there that evening? A. Yes, it was within half an hour of nine o'clock.

Q. And according to your best recollection was it before nine? A. I think perhaps beginning a few minutes before nine o'clock; it was about nine o'clock.

1271

Q. When you went into the room who was present? A. Mrs. Dwight and Mrs. Owen.

Q. Did you go in to see Dwight while they were there in the room? A. I can't say whether I did or not. I think so.

Q. Was Mr. Dwight in the sitting room at all that evening? A. That I can't say; I am in doubt whether he was sitting up when I went there or not. I had it in my mind that he was, but I am not certain whether it was that night or some other night.

1272 Q. Is your recollection of the events of that evening clear? A. Well, fairly so.

Q. Then don't you recollect as to whether the patient or sick man that you came to sit up with, you found out in the sitting room sitting up when you came there or not? A. I am quite positive he was in his bed, but I am not entirely certain.

Q. Why are you in doubt about it? A. Because I



had been there that was the third time, at least one of the other times he was sitting up.

Q. And this may have been the time he was sitting up? A. I can't say whether I saw him sitting up once or twice.

Q. Then if I understand you right you are in doubt still (in some doubt) as to whether he was sitting up when you came in? A. A little in doubt, but I am pretty sure he was in bed. 1273

Q. Are you in doubt as to whether you went into the bedroom while Mrs. Dwight and Mrs. Owen were there? A. I went into the bedroom while they were there I know; I am not in doubt about that; I remember it.

Q. At what hour do you say Mrs. Dwight and Mrs. Owen left the room? A. About 10 o'clock.

Q. At that time had anything occurred in reference to Mr. Dwight to indicate that that expected Friday night chill was going to come? A. No, there was nothing to indicate it. 1274

Q. Did you have with you any preparation for the purpose of aiding or relieving the sick man, in case the chill came? A. Do you mean with me?

Q. Yes, there in the room? A. There was some brandy there, some one called my attention to, I think Dr. Burr.

Q. Anything else? A. That's all, bay rum in the sitting room.

Q. Brandy and bay rum, so far as you know, were all the medicines that were there for the purpose of relieving the sick man in case the expected chill came? A. That is all I remember of, except I saw ammonia after he was taken. 1275

Q. No medicine of any kind left with you to administer to him, or any directions left with you as to how to administer medicines in case this expected chill should arrive? A. No, no further than I was directed to give him brandy in case he became chilly.

Q. You say the doctor was there? A. Dr. Burr was there.

Q. He left no medicine whatever with you to avoid the effect of the anticipated chill? A. No, no further than I have stated.

1276 Q. You alone were left with him during that night in which this expected chill was to come? A. Yes; I was left alone with him after eleven o'clock.

Q. Had you any skill of any kind, nature or description, for attending to or relieving a man who was supposed to have a congestive chill that very night? A. No more than any person would have.

Q. Had you any skill? A. No, sir; I had not.

1277 Q. Were there any arrangements of any kind or description made that anybody should assist you in that room that night, that you know of? A. Not that I know of.

Q. Was there any indication or intimation that any physician would come that night? A. I can't say; I don't remember.

Q. Then if I understand you, there was no skilled or trained nurse whatever in attendance upon him that night? A. No.

Q. As you were there on Friday evening, did you expect or anticipate that any chill was coming to that patient? A. I didn't expect any chill.

Q. Did you expect one was coming? A. No, sir; I didn't expect it.

1278 Q. Then, did you believe Col. Dwight when he said to you he expected a chill would recur that night? A. He didn't tell me he thought the chill would recur that night.

Q. Did you believe his fears were exaggerated when he mentioned the possibility of a chill coming? A. That was my idea of his case.

Q. Had you, on this Wednesday evening, when you were there, or on Friday evening prior to the

time when you heard the gasping, heard or known, from your own knowledge, of a single physical indication of Walton Dwight that foretold that a chill was coming? A. I am not competent to say what would foretell such an event.

Q. To your mind? A. I can't say.

Q. Was the door leading from the sitting room, 1279 where you were that night, into the hall, locked? A. No, sir; it was not.

Q. You are positive of that? A. No, sir; it was not locked.

Q. You are positive of that? A. Yes; I am.

Q. After Mrs. Dwight and Mrs. Owen had left you that night, about ten o'clock, as you say, where did you station yourself? A. Took a seat near the door leading into the Colonel's bedroom.

Q. Which side of the door? A. I sat near the northern part of the room.

Q. Near the hall? A. No; in the other direction 1280 from the hall.

Q. In what direction was your face turned? A. Towards the bed.

Q. Was there a light in the sitting room? A. Yes; a gas chandelier.

Q. One or more burners burning? A. I can't say; I think more than one—certainly one.

Q. Burning high or low? A. Well, high; the light was good in there.

Q. Was there any light in the bed room? A. Yes; gas light—that was low.

Q. Did it remain so all the evening? A. I can't 1281 say whether I turned it up at any time when I went in there or not.

Q. Have you any recollection as to its being turned up that night? A. Turned up certainly when he was taken; I think I did once before, but I am not certain.

Q. If you turned it up when he was taken, it was

low when he was taken? A. Yes, sir; rather low.

Q. What occupied your attention while sitting there in the sitting room? A. What did I do?

Q. Yes, sir. A. I read a little, I think.

Q. Reading a book, were you—what kind of a  
1282 book? A. I didn't say I was reading a book, I think I read something—a newspaper or something; I can't say whether I did or not; I sat in the chair all the evening, any way.

Q. And how long a time elapsed before you heard anything? A. From when?

Q. From the time you sat down in the chair and before you heard anything? A. I was in the bedroom twice before; twice before I heard the gasping.

Q. The first time you went in was about how long after you sat down in the chair? A. Can't say.

1283 Q. Get within some minutes of it? A. Probably half an hour or such a matter.

Q. Did you go in then because you were wanted, or of your own will? A. I was called by Mr. Dwight; he said his head was feverish.

Q. Did you put your hand upon his head? A. I am not sure whether I did or not.

Q. You have no personal knowledge, except from what he said that his head was feverish? A. I don't know whether I have or not; I don't recollect about that.

Q. Did he say anything else? A. Yes, sir; he  
1284 wished me to put a bandage upon his head, saturate a towel with bay rum, and I did so—the bandage consisting of a towel wet with bay rum.

Q. Did you notice his breathing then? A. I did not.

Q. Then there was nothing in his breathing at all to attract your attention? A. No, not that I remember now.

Q. You were occupied in that business possibly a minute? A. I presume so.

Q. Then you went out and sat down again? A. Yes.

Q. How long did you remain before you heard or did something more. A. I gave him some water after that; I think it was after that at least. 1285

Q. How long after? A. I am not certain which I did first.

Q. How far apart were they? A. In the neighborhood of half an hour or more.

Q. Glass of ice water? A. No; I don't think it was ice water; he only took a swallow of water.

Q. He drank that, did he? A. Yes.

Q. These two times you were in, were his eyes open or closed? A. Open.

Q. Did you notice anything about his eyes? A. I didn't notice anything peculiar.

Q. Did you turn up the gas as you went in there? A. I am not certain about that. 1286

Q. Did you notice anything peculiar or especial about him at either of those times when you went in? A. No.

Q. Notice anything about his voice? A. Not that I recollect of now.

Q. Was his voice at that time anything different from what it had always been, according to your recollection? A. It was not so strong and loud as usual.

Q. Of course it would not be so loud in a sick room, but with the exception of its not being loud, was there anything else you noticed? A. I don't think it was so strong as common. 1287

Q. After you gave him the water, or if that was before you gave him the towel bandage, how long elapsed before you saw or did something more? A. He spoke about his new way of keeping down food; I went to the door at that time.

Q. Did you go in? A. I don't think I went further than the door; I went inside the door.



Q. Please give the whole expression he used ?

A. He said he had a new way of trying to keep his food down, and he reached over on the desk or stand and took a cracker and put it in his mouth; I heard him bite it.

1288 Q. Did you see him swallow it ? A. I don't know ; I don't remember whether he did or not.

Q. Did you notice anything especial at that time ? A. No, sir ; the room was darkened, that is, it was not a bright light in there.

Q. Was it light enough so you could see him ? A. Yes, I could see him.

Q. And see what he did ? A. Yes.

Q. How long a time, according to your best judgment, elapsed between his taking the cracker in his mouth and your hearing the gasping mouth ?

A. I don't pretend to say that his taking the cracker was the last thing he did and the last time 1289 I went in there ; I can't give the order of my going in there.

Q. Can you remember the order in which any of these events occurred—the towel and the swallow of water and the taking of a cracker ? A. I think I have given them in order.

Q. Assuming the cracker was the last, how long a time elapsed before you heard the gasping ? A. Not to exceed fifteen minutes.

Q. Had there been anything heard by you from the room between those two events ? A. No, nothing whatever.

Q. What were you doing during those 15 1290 minutes ? A. I sat in a chair by the door.

Q. Were you reading ? A. No, not as I recollect now ; I don't think I was.

Q. How long a time was that gasping according to your recollection ? A. Not a very long time ; it continued while——

Q. Was it five or ten minutes ? A. No.

Q. About how long ? A. A minute or two.

Q. You should judge somewhere from 60 to 120 seconds? A. Short time.

Q. Can't you give it in time so we could tell something about it? A. I could give what I did.

Q. I ask you if you can give some idea about the time? A. It lasted until I left the room. 1291

Q. How long was that? A. About a minute or two.

Q. How long after you commenced to hear the gasping before you moved? A. I went as quick as I could to his bedside.

Q. Did he say anything to you? A. He spoke my name.

Q. Was that when you were in the sitting room or in the bedroom? A. When I started out.

Q. When you went in were his eyes open? A. Yes. 1292

Q. Was he looking at you? A. I don't remember.

Q. Was the gas turned up? A. I think I turned it up, immediately.

Q. Did you notice anything peculiar about him then? A. I noticed he was sick.

Q. What did you notice that was peculiar about him at that time that you can speak of? A. Well, I noticed he was cold and pale—pale in his face.

Q. Did you feel of him? A. Yes.

Q. Did you see his flesh was cold? A. Chilly.

Q. I thought you said on your direct-examination that his flesh was warm and soft? A. Well, he was chilly; I could see he was in a sort of chill. 1293

Q. Did you say on your direct-examination, that his flesh was warm and soft? A. I don't think I did.

Q. Is it true, if you did say so? A. No, his flesh was cool; he was chilly.

Q. Did you not see anything else except that his face was pale and his flesh felt chilly. A. He was gasping.

Q. With the exception of those three things, did you notice anything? A. I noticed he was sinking away.

1294 Q. What expression or what physical mark was the evidence that produced upon you the impression that he was sinking away? A. He became unconscious shortly after I went there.

Q. That is what you mean by noticing that he was sinking away? A. Yes.

Q. Have you given me all of the physical indications that you noticed to denote that he was in a very sick state? A. I have stated what occurred there; that is all I noticed, of course.

Q. Have you given me, in answer to my question, all the physical indications that you noticed?  
1295 A. All that I remember now.

Q. Did you administer to him any medicine of any kind? A. Only as I have stated.

Q. What was that? A. I gave him some brandy.

Q. Was there any hartshorn mingled with it? A. No.

Q. Was there any hartshorn in the room? A. I saw it there after Mr. Spaulding came; I don't know whether it was in the room before or not.

Q. Did the gasping continue until you started for Mrs. Dwight's room? A. Yes, it did; it grew fainter.

1296 Q. Was the gasping what attracted your attention before you started? A. I heard a sort of gasp that started me first.

Q. It was after that he spoke the word "Charley"? A. Yes.

Q. How could he gasp and speak at the same time? A. I don't pretend to say how he could have done it: he did it; that's all I can say.

Q. You went to Mrs. Dwight's room and rapped?  
A. Yes.

Q. Did you say anything to her? A. No.

Q. And went immediately back to Mr. Dwight?  
A. Yes.

Q. When you got back were his eyes open? A. I think they remained open all the time; that's the way I recollect it now. 1297

Q. Was there anything that he did at that time to denote that he recognized you after you came back?  
A. No, I don't recollect anything.

Q. Was he breathing? A. Yes.

Q. Did you feel of his pulse that evening at all?  
A. Yes, after I came back. I think I felt of his pulse before I went.

Q. When you came back and felt of his pulse could you feel it? A. Yes.

Q. Have you sufficient skill to tell how a pulse is beating, whether it is rapid or not? A. I can judge somewhat of that; I have had some experience. 1298

Q. Of which arm did you feel it? A. I think the one nearest to me—the right one.

Q. You don't remember which it was? I think it was the right arm.

Q. Which side of the arm? A. Just back of the thumb on the wrist.

Q. Who was the first person who came into the room? A. Mrs. Dwight.

Q. How long after you went for her before she came? A. She came very soon after—not over a minute and a half or two minutes; a very short time afterward; the next person who came into the room was I think, Mr. Spaulding, he came two or three minutes after, I couldn't say; she touched the bell for him to come and he came up. 1299

Q. Who was the next person who came into the room? A. I can't say which came next, three or four came in right away.

Q. Were there any medicines administered to

him after Mr. Spaulding came into the room? A. Mr. Spaulding gave him some ammonia.

Q. And brandy at the same time? A. It was separate, I don't know whether he gave him brandy or not.

1300 Q. Was there anything else administered to him? A. No other medicine, nothing inwardly that I know of.

Q. Was there anything else done to him? A. Mr. Spaulding pinched his tongue, and felt of his pulse.

Q. Anything else done to relieve him? A. No, nothing that I recollect of.

Q. Was there no hot water brought in? A. Oh, yes, I think so.

Q. And his hands put into the hot water? A. Yes.

1301 Q. How were his hands when they were put into the hot water? A. They were cool.

Q. Were they in any particular form or shape—open or closed? A. Open.

Q. At that time was he breathing? A. I can't say whether he was or not. It was hard to tell at that time any way.

Q. When Spaulding came in was his mouth open or closed? A. His mouth was closed.

Q. Did Mr. Spaulding make an effort to get hold of his tongue? A. He did get hold of it at some time.

1302 Q. Did he make any effort to do it, or was it an easy matter for him to do so? A. I think he opened his mouth.

Q. Did Mr. Spaulding open his mouth. A. I can't say.

Q. Was there dancing that night at the Spaulding House? A. I understand now that there was; I don't think I knew it then.

Q. Did you hear the sounds of the music that night? A. No.

Q. The Wednesday evening that you were there,



did he say, in substance, to you there, that people did not think he was sick ; that he knew he was sick, and he was disgusted with men that came there and told him he was getting better, and he knew he was not ? A. Yes ; he said that, in substance.

Q. The evening that he died, did he appear to you as well as he had at any time during his sickness ? A. He appeared about the same as he had at any time I had seen him. 1303

Q. Did he, up to the time he was taken with this gasping ? A. Yes ; I didn't notice anything.

Q. Upon the occasions you attended him, did you see him vomit any ? A. No ; I never did.

Q. Have you, during the last two years, spent a considerable portion of your time out of the State ? A. No time to speak of ; I have traveled out of the State and back again at different times.

Q. Weeks and months at a time ? A. No, sir ; never. 1304

Q. How far have you traveled outside of the State ? A. I have been out in Ohio ; that is the farthest away, I think.

Q. Anywhere in the South ? A. No.

Q. Pennsylvania ? A. I have been in Pennsylvania.

Q. Virginia ? A. No.

Q. Massachusetts ? A. No.

Q. Any of the New England States ? A. No.

Q. Are you a married man ? A. I am not.

Q. Never been married ? A. No, sir.

1305

*Re-direct-examination by Mr. Newton ;*

Q. Is this travel spoken of in connection with your present business, as manufacturer and seller of cigars ? A. Yes ; I have done some traveling in that respect.

Q. Is that the bulk of the traveling you have

had? A. I traveled some before I was in this business.

Q. Since you have been in this business, you have traveled some in connection with your firm?

A. Yes.

1306 Q. Who is your partner in your present business? A. My brother and Mr. Jackson are my partners in this business.

Q. You have been doing what portion of the business? A. Traveling a portion of the time, selling our product; that is the travel I speak of.

Q. State what Mr. Dwight said to you at the conversation counsel referred to, about its being the night for his chill? A. The Colonel said that he had had two chills before that; I think he said two; that they came at certain stated intervals of about a week between them, as I understood. That if he could bridge over this next chill, he was in a fair way to get well, that was his idea of it. That it was liable to occur, if it came at all, on that night.

1307 Q. Anything further that you think of in that regard? A. Not that I think of now.

Q. Let me call your attention as to whether he said anything about which, if either, was the more severe? A. The last one he had before that was his worst one, as I understand it; I think he told me so.

*Re-cross-examination by Mr. Russell:*

1308 Q. Have you been in conference with any one as to what would be your testimony in this case? (No answer.)

Q. Isn't that a plain question? A. I don't think it is.

Q. Do you know what a "conference" means? A. Yes, sir.

Q. Have you had one with any one about what your testimony would be? A. Yes, but not about what my testimony would be.

Q. More than one? A. Yes.

Q. How many; twenty or thirty? A. No; twice, I think, I met Mr. Newton.

Q. Not more than twice? A. I don't think it was more than twice.

Q. Have you had many conferences with Mr. Chapman? A. I have never had any real conferences with him upon the subject. 1309

Q. Have you talked with him upon the subject of your testimony? A. Very slight.

Q. Have you talked with him at all? A. Yes, a little.

Q. How many times? A. Two or three times.

Q. Any more besides the counsel, Mr. Newton and Mr. Chapman? A. No.

Q. Have you had conferences with Warren Spaulding this very day? A. Well, I have had no conferences with him about it on any day.

Q. Haven't you had consultations with him? A. I have answered one or two or three or four questions he has asked me. 1310

Q. Have you talked with him about it to-day? A. No.

Q. Have you talked with him upon the subject of your testimony? A. He talked to me about his testimony.

Q. Did you compare views together? A. He asked me certain questions; I didn't compare any views with him.

Q. Did you and he compare views together about your testimony? A. He compared his testimony to mine; I didn't compare anything. 1311

Q. And you didn't compare your testimony with his? A. No.

Q. Were there any raps on the door that night that you did not answer? A. What door?

Q. Door from the sitting room to the hall? A. I think some one came there that night.

Q. And rapped? A. That I can't tell now; I know Mr. Sears came there; I heard so.

Q. Didn't you hear somebody rap? A. I can't tell whether I did or not.

Q. Did you answer the rap? A. I can't tell whether I did or not.

Q. Did anybody? A. Yes, sir, I understand so.

Q. Did you see anybody answer it? A. No.

1312 Q. Then of your own knowledge you don't know whether anybody answered the raps you heard, or not? A. I don't know that anybody rapped, of my own knowledge.

Q. I ask you if you recollect anybody rapping upon the door? A. I do not.

Q. Did you hear anybody rap upon the door? A. I don't recollect that I did.

Q. Did you hear any footsteps coming to the door? A. I don't recollect that either.

Q. Have you any knowledge of anybody coming to the door? A. No personal knowledge.

1313 Q. When you speak of thinking that some one came to the door you don't speak of your own knowledge? A. No, sir.

Q. Where were you that you should not hear? A. I was in the sitting room.

Q. And yet you couldn't hear? A. I didn't say I couldn't hear.

Q. You didn't hear? A. I don't say I didn't hear; I say I have no recollection.

Q. You didn't go to the door? A. No, sir.

*By Mr. Newton :*

1314 Q. And was that while Mrs. Dwight and Mrs. Owen were in the room? A. Yes, sir.

FRANCIS W. DOWNS, called as a witness on behalf of the plaintiffs and sworn, testified as follows:

*Examined by Mr. Newton :*

I reside at No. 1 Dwight block, in the city of Binghamton, New York; I have resided at Binghamton the last time about seven years; most of my life has been spent in and about Binghamton; I am an attorney; I am the Recorder of the city. 1315

Q. Were you acquainted with Walton Dwight?

A. I cannot say exactly; I knew him for some years before his death; I knew him by sight from the time he came to Binghamton, but I don't recollect when my acquaintance was first formed with him; my acquaintance with him during the last few years of his life was not very intimate; I saw him almost daily—sometimes half a dozen times in a day; I lived near his hotel; when it was building I lived on a farm. 1316

Q. During the time you have known him, have you ever known of his having a cough?

Objected to as incompetent and immaterial; the Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. I did not; I saw him twice during his last sickness—the first time on the 6th of November, 1878, and the next time the 8th of November, 1878; during his sickness I watched on the nights of the 6th and the 8th—two separate nights; on the night of the 6th I reached his room between ten and half-past ten o'clock; Mrs. Dwight and Dr. Daniel S. Burr were there at the time—no one else; I think the doctor went out soon after I came there—perhaps ten minutes; Mrs. Dwight left fifteen or twenty minutes after I arrived there, I think; I next saw Mrs. Dwight on the following morning. 1317



Q. Upon her leaving, state whether any, and if so, what directions were given to you?

1318

Objected to as incompetent, immaterial and irrelevant, and also as calling for hearsay evidence; the Court overruled the objection, saying: I will receive it upon the theory that it was an act in the presence of Mr. Dwight, and within the space of time during which it was alleged that the conspiracy was going on, and an act in connection with his illness; to which ruling the counsel for the defendants duly excepted.

1319

A. Mrs. Dwight, before leaving the room, said to me that if in the night I should have occasion to call her, that I would find her in the room at the rear of the parlor just back of the room that the Colonel occupied; that the door was directly opposite the end of the hall; whether she gave me the number of the room I don't remember; after she left there was no other person present during that night, and until her reappearing in the morning, except Mr. Dwight and myself; two or three times during the night he appeared to drop off into a little doze—I don't know that you would call it a sleep exactly; no sound sleep; that was all the rest he had; he had no food during that night; I think once or twice during that night he drank some water, but little; I think he took the medicine himself; I gave him none; the medicine

1320

was left upon the table; during the night he did not get up; when I went there he was in bed, and remained there through the night; I talked with him on the morning of the 7th of November in regard to the condition of his health; that first night I think I had no occasion to put my hand on his person; I was there another night, the second night afterwards; I reached the room

between ten and half past ten at night I should say; when I reached the room on that occasion Mrs. Dwight was there; Dr. Daniel S. Burr was there before Mrs. Dwight left the room; I had been there before Dr. Burr came that evening, perhaps 15 or 20 minutes; he stayed about 15 minutes; I was not in the room while the doctor was there; I sat in the sitting room; Mrs. Dwight was in the bed room nearly if not all the time the doctor was there; I mean off from his room; Mrs. Dwight left a few minutes after the doctor left. 1321

Q. State whether any direction was given to you that night as to where she would be found, and if so, what direction?

*Mr. Russell.*—To that we interpose the same objection as we did to a similar question as to the night of the 6th.

*The Court.*—The same ruling. The defendant excepted. 1322

A. She said she would be found in the same room as before, she stated that I should call her about 6 o'clock, and I rapped at her door about 6 o'clock; when I reached there that night Mr. Dwight was in bed; he did not get up that night; I did not sleep any that night; the greater part of the night I spent by the Colonel, and going to and from the stove in the parlor.

Q. Will you describe to the jury his condition and what occurred that night fully as well as you can? A. Well, when I went into the room on the night of the 8th I saw no marked change from that of his condition when I left on Wednesday morning—Thursday morning I should say; about 12 o'clock or a quarter of 12, he seemed impatient and restless in the bed; as I say, about 12 o'clock he began to grow restless and to move about in the bed, rub his head and forehead and moaned a little; that continued for some time; perhaps ten or fifteen minutes after I noticed that he began then 1323

to rub his head and forehead very rapidly with his hand and said he had pains.

1324           The counsel for the defendants objected to what he said, as incompetent and as his own declarations in his own behalf.

The Court overruled the objection and the defendant excepted.

1325           He said he had severe pain across the bowels, and rubbed his person ; “ across the bowels ” was the termed he used I think ; he rubbed his hands across his abdomen ; I asked him if there was anything I could do for him to relieve him ; he said I might warm some cloths that were left there and apply those, and I did so, two woolen cloths that were left, I would warm one by the stove that was in the parlor or by the stove and bring it in, place  
1326 it on his person, and take the other out and warm it and return it as soon as it was warm, and kept applying those for some time ; and in the meantime his countenance grew pale, and he began to sweat, and he grew chilly, and his forehead was all perspiration, that is, I rubbed it off and it appeared like a cold sweat—and his forehead was cold, and I continued to apply the cloths until I think about ten minutes of two, and I asked him if I should send for the doctor, and I don’t remember his reply, but I did send for the doctor, and I think Doctor Daniel S. Burr came there about twenty minutes past two. At this time the same condition apparently existed, and I continued up to that time to apply the cloths, and when the doctor came I don’t know whether he gave any medicine or not, but he injected into his arm something I understood was morphine, in the right arm ; and the colonel asked him to inject some in his leg also, and see if it would give him relief and he did it, and Colonel Dwight said to the doctor that he had better squirt some in

the other leg and see if he could get some relief. At that time he did, and I think by the time the third injection was administered into the flesh, he began to be easier and there was a change in the countenance. It for a time looked a little purple. And from that time he began to grow feverish, and that fever continued for some time. My impression is it was about three o'clock when that fever wore off. At first when he was taken I put some additional covering upon him; he was cold, and that I removed at that time. And soon after the doctor arrived I desisted from applying the warm cloths, and after three o'clock or about three o'clock he appeared easier, and I think it was about 4 o'clock that morning that the pains began to—he began to make demonstrations of pain, and I again sent for the doctor, and my recollection is that he again injected morphine, or what I supposed to be that, and that relieved him, and up to about 5 o'clock he continued somewhat restless, and from 5 to 6 he was very quiet, and at 6 o'clock I called Mrs. Dwight, and soon after she came in, and I think I left. The first morning I remained to breakfast with Mrs. Dwight, but I think that second morning I left pretty soon after Mrs. Dwight came into the room. That is about his appearance as I saw it that night.

Q. Can you describe any more fully, and if so, describe the actions of the man when he appeared to be under the influence of pain, as you suggest?

A. Well, I bolstered him up with pillows in the bed—that was in the evening, or about 12, and he kept a constant motion of rubbing his forehead and pressing it, and at times would strike it with his hand—strike the forehead with the open palm in this way (indicating), what I considered a very severe blow, and would then continue to rub it, and from that he would remove his hand from the forehead and would rub his body very rapidly in very rapid motions with both hands across the stomach.

Q. Did he say anything more in connection with these pains that you remember, more than you have just stated? A. Only as describing them to me. Afterwards he was relieved at 6 o'clock in the morning.

1330 Q. During the complaints and occurrences described, can you tell any other thing he said, indicating the extent or what there was of his pain? A. No, I cannot.

Q. Did you see him after leaving that morning before he died? A. No; I did not until after his death.

*Cross-examination by Mr. Russell :*

1331 I said my profession was that of a lawyer : I was admitted September 5th, 1878 ; that has been my entire business since, excepting the time that is occupied in an official capacity of an hour or two a day as Recorder ; I am exercising professional duties also ; at this time when I acted as nurse I had been admitted to the bar ; I was admitted the 5th of September preceding that. Mr. McDonald, my partner, asked me to go there the first night ; he was a brother-in-law of Mr. Dwight ; he married his sister ; his first name is Theodore F. McDonald. I am not one of the beneficiaries named in the will, that I am aware of. At that time I had had no other experience as a nurse or watcher ; I went there simply in a friendly way.

1332 Q. Did you on the first night see anything in Colonel Dwight which you can describe, aside from his talk, which indicated disease or pain? A. Nothing that would indicate pain, but I saw a change in the man from what I had seen in him before.

Q. Did you see anything you can describe that indicated disease? A. I cannot, as I understand the word disease.

The counsel for the defendants here moved the



Court to strike out that portion of the conversation testified to by the witness in which he says that Dwight spoke of and characterized his pain, as incompetent.

The Court denied the motion, to which ruling the counsel for the defendants 1333  
duly excepted.

Q. Now, on the second night, did you see, apart from what Mr. Dwight himself said, and apart from his motions, that he acted in any way that indicated either pain or disease? A. Yes, I think that he did. It was something that I can describe, and was something aside from his motions—a change in his countenance; there were several changes in his countenance during the night. At first he grew pretty pale — very pale; that was between twelve and one o'clock; I think from the time I noticed the change in him first until the second change it was possibly an hour and a half; that second change was a sort of purple hue upon the face, apparently covering the whole face; after that there was a change—there was, at the time I speak of, a sort of fever upon him, and it was then a red and flushed countenance. I mean to make a distinction between a red face and a purple face. 1334

Q. You speak of fever; did you feel of him then? A. I did.

Q. Did you feel his pulse? A. I did not. I placed my hands on his hand, I bathed his forehead a number of times during the night. I don't recollect that after I bathed his forehead his face was less feverish. 1335

Q. You recollect the fever without recollecting whether you aided it by bathing it? A. I don't know whether I aided it or not; I don't know whether it effected any change or not. That was not far from two o'clock at night. That lasted, I think, perhaps about half an hour. His skin was moist—not

all the time ; it was very much more moist at times than at others. I can't say whether it was moist continually or not.

1336 Q Did you communicate any of these symptoms you noticed to the doctor? A. I think so, all of them. I think he was advised of all I saw that night when he came. It was Dr. Burr, he came the first time, I think it was about twenty minutes after two. I sent a card to him the first time, and the next time he came about four ; the first time I think he was there about half an hour, the next time but a few minutes. He had grown considerably better the last time.

Q. During either of these two nights, did you feel of any portion of his body but his head? A. Yes, I felt of his hands the last night. My hands come in contact with his body in applying the cloth. That was the only feeling.

1337 Q. Did you notice anything about his flesh at that time? A. I noticed at one time it was cold, at another time feverish.

Q. Was it moist? A. That I don't recollect, aside from the forehead and face.

Q. At the time you felt of his body, and you think it was feverish, what was the color of his face? A. Red, and when his flesh was not warm the color of his face was pale. There was a time when his flesh was not warm ; that was early ; that was Friday night—the last night I sat up with him.

1338 Q. Was this moisture you speak of ordinary moisture, or was there more than ordinary perspiration? A. There was, at first. The first time he perspired freely, the body was cold : the next time it was warm ; he had been drinking, I think, a good deal of ice water.

Q. When his flesh was cool and when it was warm the moisture corresponded? A. No ; There was less moisture upon the head and face during the time it appeared feverish than there was when it appeared paler earlier in the night.

Q. What time was it when this perspiration which you noticed was cold—what time in the night?

A. Half-past twelve or one when I began to notice that; I did not notice the same cold perspiration again that night.

Q. Had he been taking any medicines before either of these perspirations? A. I don't remem- 1339  
ber about his taking anything except ice water while I was there; up to the time he had this cool spell he had taken no medicine at all that I know of; there was medicine there; there was something in a vial; I don't know what it was; I was not told what it was. On the last evening the doctor came after I did; he came early in the evening, about half-past ten or eleven; he left no directions with me about administering medicines; none were administered in my sight that I have any recollection of now. I think this vial containing medicine, of which I have spoken, was on the dresser that was 1340  
convenient to the head of the bed—on the wash-stand or on the commode—the one nearest the bed. I don't know what that medicine was. I couldn't say what was the color of the fluid in the vial I speak of; I have no recollection about it. I could not say whether there was more than one vial of medicine there; I have a distinct recollection of one. The size of that vial I don't know; as I recollect it now, an ounce and a half or two ounce vial; I can't say whether it was full or partly full; I have no recollection in relation to the medicine.

I have had conferences with the plaintiff's counsel about my testimony—with Mr. Chapman and Mr. 1341  
Newton—more than one with Mr. Newton—only two—and one more with Mr. Chapman. At those conferences none of the doctors were present. I have not done any reading of any medical book in connection with this case, nor have I talked with any medical men in relation to the case. I have had conversation with Dr. Daniel S. Burr about the case, since the death. I have not imparted to him

1342 any additional information than that I gave him during the sickness; I was not a witness on the coroner's inquest. I have listened to the testimony given here since the Court began; I have been a constant attendant at this Court since it began; I was here day before yesterday; I have been here every day since the Court began, except half a day Saturday. After Court day before yesterday, I walked up and down the street before tea; after tea I don't think I was out of my room; I was in my room all night; I was at Mr. Newton's office last evening; my lodgings are at the Eagle Hotel, and I was in the room all last night after I left Mr. Newton's office—after 10 o'clock—all night long, and I spent the night in no other place.

*Re-direct-examination by Mr. Newton :*

1343 I was not at the commencement of the first autopsy; I was at the first autopsy, but not at the beginning of it; I was not there before the body was cut open; my interview with Mr. Newton was last night; the other was about the 15th or 20th of May, last. When I was subpoenaed to come here before at the May Term of Court, I went to Doctor Burr and asked him—my interview with him had reference to the card I sent to him the night I watched; I had no talk with him upon any subject of medicine or medical science.

1344

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THEODORE F. McDONALD, called as a witness on behalf of the plaintiffs in rebuttal and sworn, testified as follows :

*Examined by Mr. Newton :*

I am a brother-in-law of Walton Dwight; and am an attorney; I commenced practicing as an at-

torney in 1867. And continued in practice there up to the present time. At the time of the death of Walton Dwight I was the District Attorney of the county. I held that office six years. My term of office commenced the first of January, 1875, and continued from that time up to 1881. I married the sister of Dwight on the first of May, 1873. 1345  
From that time on I saw Mr. Dwight very frequently at his house and my house. Dwightville is a portion of the city of Binghamton in the first ward, a place covering 12 or 15 acres or about that number of acres.

Q. State to me what amount of building there was on this property made by Mr. Dwight—I mean the number, extent and value of them.

*The Court.*—He may state the number of buildings and describe them.

A. He built a brick block, consisting of eight houses altogether, of brick, with basements, four stories high and they were plumbed with gas and water and all the modern improvements, and in addition to that was about 40 other houses he built in this Dwightville. 1346

Q. *Mr. Larocque:* By whom? A. By himself, all of which were expensive houses, and first-class houses, of wood.

Q. *By Mr. Newton:* And were those so supplied with gas and water? A. Yes; and all sewered and all at his own expense.

Q. The sewers were all at his own expense? A. Yes. 1347

Q. And how about the gas and lights? A. There was gas and water in all these houses.

Q. And any fountains? A. Yes, sir; I should think there were 8 or 10 fountains. The land on which the block and a large number of the houses were built was formerly owned by Daniel S. Dickinson, and was a low swampy part of the city, and



before he put this building on he filled it up with dirt drawn in from different parts of the city.

Q. How near the Chenango river was it? A. It extended along the Chenango river.

Q. And how near the Erie Railroad as it crossed the river? A. And on both sides of the railroad.

1348 Q.. State whether any streams besides the river pass through this property? A. Yes, sir; there was a brook that passed into the river through it. There was a stone work put all along the river along his property, and also on either side of this creek—common stone, laid up to protect it.

During the last sickness of Mr. Dwight I saw him at his rooms at the Spaulding House; I was there nearly every day during his sickness. I stayed with him one night. It was in the fore part of November, I can't tell the day.

Q. Can you tell me what night it was as compared with the first night Downs was there? A. It is my recollection that it was two or three nights before that; it might have been three or four.

Q. I ask whether it was after you heard about his having had a chill that you were there?

Objected to.

*The Court.*—He may state for the purpose of fixing the time he was there, that it was after he had heard of his having a chill, but not to characterize it further than that.

1350 *The Witness.*—That is the fact that I stayed all night.

*Mr. Larocque.*—The witness don't pretend he had a chill while there? A. No, sir. I saw him quite frequently during that last sickness; on my first learning of his sickness I went up there and found him sitting up, and from that time on I was there; perhaps there was hardly a day I didn't go up and see how he was. He seemed

to grow—he looked haggard, and lost flesh and was weaker, I thought, from day to day. I was there in one of the early days of November; I don't recollect of being called there particularly at the time he was alleged to have had a chill; I was not present then. On that night when I went there and sat up with him Mrs. Dwight was there, and during the evening some of his neighbors came in. I think Charles W. Sears, but I am not distinct about it, and it seems to me Col. Jones and his wife came, but I am not positive; that is my recollection, but I am not positive whether it was that time or not. He was in bed most of the time; he was up once that night, and Dr. Burr came in that night. I think he got up while the doctor was there; I think so. 1351

Q. Describe how he got up during this sickness, whether with help or alone? A. I helped him. He put his arm around my neck, and I would go along by his side. When sitting in a chair he had bedquilts around him. I assisted him in getting from his chair and returning to the bed. 1352

Q. Why? A. Well, he was weak, and could not get his legs up; he did not have the strength.

Q. Did you have any occasion to rub him, or put your hands on him while caring for him? A. I did not; I did not rub him.

Q. And when you lifted him, or assisted him, at that time, did he make any statements of difficulty in rising, and if so, what?

Objected to as incompetent, on the ground that the question calls for hearsay evidence. 1353

*The Court.*—You may state what he said in that connection about that particular subject,—to which ruling the counsel for the defendants duly excepted.

A. It is my recollection that he claimed to be sore and lame.

Q. Did he state where he was sore?

Upon objection by the defendants the Court excluded that.

1354

On that night when I sat up, Mrs. Dwight retired between half past ten and eleven o'clock, I should think.

Q. Was anything said to you by her as to where you would find her if needed, and if so what?

Objected to as incompetent, and as calling for the declaration of Mrs. Dwight, and also as calling for hearsay evidence. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

1355

A. She occupied the room right back west of this room—a bed room—the house fronts east—and she told me I would find her there if wanted. During that night Mr. Dwight slept some, not very much; he was restless until about 2 o'clock and then he slept probably two or three hours. I think that no persons were in after Mrs. Dwight left until her return in the morning. After spending the night there that night, I continued to see him; I saw him again before he died almost daily; he looked more pale and sick; he was losing flesh all the time. I can't tell, but it seems to me that I was there a day or two days before he died—I can't tell exactly. I knew that Downs sat up there, I think I was there the day after Mr. Downs watched with him.

1356

Q. What was his condition then? A. He was lying in bed. And it is hard for me to describe his condition more than I have. During the time I have known Mr. Dwight, and since I married his

sister, we were always, until his death, on close visiting terms as brothers-in-law ; we lived very near to each other, two or three hundred rods, I suppose—I think two or three hundred rods would cover it.

Q. Did you ever see him spit blood ?

1357

All of the questions of this class were in due season objected to as incompetent and immaterial. The Court overruled the objections, to which ruling counsel for the defendants duly excepted.

A. No.

Q. Did you ever hear him cough ? A. Yes, sir, I heard him cough when he had a cold. I heard him cough. I don't remember of hearing him cough particularly except one time when he had a hard cold. He had a very heavy deep voice.

Q. I will ask if you ever saw him sick ?

1358

Objected to as incompetent and immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. Yes.

Q. Before his last sickness ? A. No.

Q. A question or two as to the Dwightville property ; the eight houses spoken of, were they built as separate houses ? State how they were built. A. They each had front doors and each were separate houses, all in one block. After it was converted into a hotel, there were doors cut through in the basement from one place to another, so you could get access from one place to another through these doors ; they were high basements ; each one had a high stoop and stairs in front—fronting the east ; there was a park in front of the house, across the road, and the river beyond. I know of the

1359

sale of this property, and what some of it sold for under the mortgages. I was somewhat acquainted with the value of real estate in Binghamton. The hole I speak of from one house to the other was in the basement, so that in going from one to the other you had to go into the basement or out of doors.

1360 Q. I would ask the witness how Mr. Dwight came to have his checks? A. (Referring to papers.) Some time in August the Colonel was at my house—he and his wife; he had his pocket book out one day, and he had a large roll of bills in there; I took those bills—this roll of money—and put it to my credit in the bank; it was just the amount of these six checks I hold here; thousand dollars, I guess; he came there, and I gave him these checks; that was September 3d, 1878.

Q. And at whose request did you give them then?  
A. Col. Dwight's.

1361 Q. Did they cover precisely the amount of money you received from him at the time you mentioned?

A. Precisely. (Papers handed witness.) These are the checks. (Afterwards marked Exhibit 100. See page 467.)

*Cross-examination by Mr. Russell :*

I am one of the beneficiaries named in the will of Col. Dwight.

1362 Q. You mentioned, in answer to the gentleman's question, that you were District Attorney of Broome County for six years; did that have any connection with Col. Dwight's affairs and his death? A. Not that I know of; I was District Attorney of Broome County at the time of his death.

Q. Had you made any investigation or examination, or acquired any knowledge to the benefit of anyone else, as to whether there was any law making it manslaughter to assist in committing suicide?  
A. In this case?

Q. (Question repeated.) A. I understand it to be the law; I understood it then.



Q. Now, can't you answer the question a little more directly? (Question repeated.) A. I never acquired any such knowledge or made any such investigation for the benefit of any one else.

Q. Did you ever read the statute to any one? A. No.

Q. You were interrogated as to the real estate transactions of Mr. Dwight in and about Dwightville. When was this building or improvement of Dwightville made? A. About the years 1871, 1872 and 1873, as I recollect it; the improvement substantially ceased in 1873, as I remember it. 1363

Q. You have stated some sum in connection with the cost of that real estate and improvement. Is your knowledge of that entire expense of a personal character? A. A good deal.

Q. Do you know, sir, independently of the statements of Walton Dwight, what was the cost of those real estate improvements? A. I do not, precisely. 1364

Q. Do you know it substantially, independently of his statement and figures? A. Only as a matter of opinion and figures, of course.

Q. Then, as a matter of opinion, you only estimate independently of Dwight's statements what you should judge to be the cost? A. Not entirely independently.

Q. What knowledge enters into your estimate? A. My knowledge of the cost of real estate in Binghamton, and the cost of building, and what I learned from him.

Q. Apart from his statement entirely, which I do not wish to enter upon, have you any knowledge upon the subject—any general knowledge—as to the cost of real estate in Binghamton? A. I have not. 1365

Q. Do you know the extent of the mortgages of Colonel Dwight upon this property when they got fully heaped up? A. No, I do not.

Q. Have you any knowledge upon the subject?  
A. Yes, I have some knowledge of it.

Q. What is the extent of your knowledge, without stating the facts upon the subject? A. The extent of my knowledge is that I know of two mortgages; I have no knowledge of any others,  
1366 except what I have heard.

Q. And how large were those mortgages? A. One was \$20,000, as I remember it, and one \$10,000.

Q. The \$20,000 mortgage was to whom? A. I shall have to qualify that; I think it was \$10,000.

Q. You think the \$20,000 was \$10,000? A. Yes.

Q. And the \$10,000 was \$20,000—is that what you mean? A. Well, I can't say what the amount of these mortgages were—any of them.

Q. Then, in that close and intimate relationship  
1367 that you have spoken of in answer to the counsel's question, you acquired no knowledge whatever of the extent of the encumbrances upon this man's property? A. No, I never did.

Q. Do you know how he got the money which the mortgages secured upon this property? A. I do not.

Q. Now, isn't it a fact, that instead of this being Mr. Dwight's property as you have testified to, at the time he put these massive improvements upon it, the property belonged to Mrs. Dwight? A. I understood that some of it was in her  
1368 name.

Q. Can you answer my question more directly? Don't you know as a fact, that this property belonged to Mrs. Dwight? A. I don't know as a fact, that all of it did.

Q. The great bulk of it? A. All I know about that is—

Q. I want to know if you know it? A. I know, that some of it—that is, I understand——

Q. Don't you know? A. I couldn't say that I knew that.

Q. And didn't you know that this property was property that he conveyed to his wife through the medium of a friend, for a consideration of \$1.00? 1369  
A. That I don't know.

Q. Were you in Court when Mr. Dwight's examination in bankruptcy was read before this jury?  
A. I was here part of the time.

Q. Were you in Court when that branch of it was read? A. If it was I didn't hear it, or don't remember it. I don't think I was when that was read.

Q. How long after Mr. Dwight had improved this property, and moved into the buildings, and occupied it as a hotel, before it was sold out from under him? A. Well, I think he was there over a year, as I remember it, about a year—I think so, 1370  
as I remember it.

Q. And you have a distinct recollection that it was about a year that he was there? A. No, I have no distinct recollection about it.

Q. I understood you were the close and intimate friend of his? A. I was.

Q. And well acquainted with his matters? A. Not particularly; I was well acquainted with him.

Q. You will say now you were not well acquainted with his matters? A. I knew what he was doing, but I never did his business. 1371

Q. Were you well acquainted with his business?  
A. I was well acquainted with what he was doing.

Q. Is that the best answer you can give me? A. With his business affairs—yes, I was.

Q. Then, in asking a gentleman who was well ac-

quainted with his business affairs, as to the extent of his occupancy of this property after he went in in 1873, let me ask you as to how long he remained in possession of this property before he was "cleaned out" by his creditors? A. Well, he was there till 1877, as I remember it.

1372 Q. Then, he was sold out by his creditors? A. Yes.

Q. Upon debts, were they, according to your knowledge, that existed at the time they began hotel keeping? A. Well, at the time he began to keep the hotel; yes, I think so.

Q. And when he was sold out by his creditors—his secured creditors—and went through bankruptcy, he left a large amount of floating debts among the people of Binghamton, entirely unpaid? A. I think not.

Q. Do you know not? A. I couldn't say that he didn't.

1373 Q. Have you read his will? A. Yes, I heard it read; I don't think I have read it.

Q. Have you read his reasons for not paying his general creditors? A. I heard the will read.

Q. Haven't you read it yourself? A. No; I never did.

Q. Have you personal knowledge of the extent of the floating indebtedness that he left among the people of Binghamton, and vicinity generally? A. I have not.

Q. Of which he didn't pay one dollar? A. No.

1374 Q. Do you know Mr. John B. Ames, who is bequeathed one dollar and sixty cents in the will of Walton Dwight, as a creditor? A. Yes.

Q. What is his business? A. I think he is a dealer in paints and oils.

Q. Do you know Mr. T. Goodrich, who is also bequeathed one dollar and eighty cents? A. I don't think I know Goodrich.

Q. Do you know Dr. T. L. Brown, who is bequeathed seven dollars and seventy-five cents?

A. Yes, he is a physician in Binghamton.

Q. Has he been attending in Court here? A. I saw him here last night for the first.

Q. Do you know Mr. James Dillin, who is bequeathed as a creditor, the sum of nine dollars? 1375

A. Yes, he lays stone sidewalks.

Q. Do you know John Kelley, who is bequeathed twenty-six dollars and ninety-four cents? A. I know a John Kelley; he is a bricklayer and stone mason, too, I think.

Q. Do you know Mr. Orlow Chapman, who is bequeathed the sum of ten thousand dollars? A. Yes; he is a lawyer.

Q. Do you know Mr. George B. Edwards, who is bequeathed the sum of one thousand dollars? A. Yes; he is an accountant, bookkeeper.

Q. Do you know Mr. Neri Pine, who is bequeathed the sum of one thousand dollars? A. Yes; he is an attorney and lawyer. 1376

Q. Do you know Ellen Carmady, who is bequeathed the sum of one thousand dollars? A. Yes; she was an old servant in the family; she is the same lady who has been sitting here beside Mrs. Dwight and Mrs. Owen several days.

Q. Is Dr. Titus L. Brown, who is bequeathed, "as a mark of kindly regard," the sum of two hundred dollars, the same Mr. Brown who is bequeathed seven dollars and seventy-five cents as a creditor? A. I know of no other Dr. Brown. The Christian name of that gentleman is "Titus." 1377

Q. Do you know Mr. George Pratt, who is bequeathed, "as a mark of esteem, and in kindly remembrance of our long and pleasant business and social relations, the sum of one thousand dollars"? A. Yes; he is cashier of the First National Bank.

Q. Is Mrs. Ruth Owen, who is mentioned in the will, the sister of Mrs. Dwight? A. She is.



Q. Do you know Mr. George F. Lyon, a gentleman who is bequeathed the sum of one thousand dollars in this will? A. Yes; he is a lawyer.

1378 Q. You were asked by the counsel to describe the character of the Dwight hotel—the eight buildings—if I remember rightly, you spoke of its having gas and water and all modern improvements? A. Yes, gas chandeliers, satin furniture; it was elegantly furnished.

Q. Was there any other high-priced and luxurious article in connection with the hotel that you have forgotten, or that you now remember, that you did not mention? A. I don't think I mentioned anything about the furniture until now; the hotel was very well finished; there was a great deal of frescoing in oil done throughout the building.

Q. None of it in water colors? A. Well, I couldn't say that.

1379 Q. I want you to be very sure about that? A. There was a good deal of frescoing done with pencil and brush; I don't know whether it was oil or water.

Q. You are unable to state whether it was in water or in oil? A. No, I cannot; it looked well.

Q. You speak of there being several fountains? A. Yes.

Q. Have you sufficient knowledge on the subject to state whether there was any reservoir around the fountains for the fish to play in? A. Yes, there was.

1380 Q. Can you state the extent and size of those reservoirs? A. Yes, one of them very well; it was just fifty feet across it; that was in front of the hotel and in the park; that was the large one in the park, and there was a large one in the rear of the hotel, too. There was a croquet lawn there; I don't know that they used it in the winter time for a skating rink; I don't think that there was a skating rink connected with the hotel; if there

was I didn't know it; this big fountain and park were sold under the mortgage; I think all the other fountains were sold out with the mortgage.

Q. That was as early as 1877, wasn't it? A. Yes; that is my recollection of the date; I couldn't tell; there was some ground connected with the house in the rear of the hotel; I don't 1381 remember anything being there; there was a large fountain there—another fountain, I don't know how large; I can't say that there were fish in that fountain, I don't remember.

Q. You say you saw Mr. Walton Dwight nearly daily after he first began to be sick; did you see him on the 15th and 16th of October, 1878? A. I couldn't tell you the dates I saw him.

Q. Do you know of his going to New-York one day and coming back the next? A. I understood he went to New-York; I saw him as soon as he came back; I saw him before he went.

Q. And were you at the house while he was at New-York, or while he was away? A. No. 1382

Q. Was that about the 15th or 16th of October? A. I couldn't give you the date about that at all.

Q. Can't you tell anywhere near it, according to your recollection? A. I should think it was in that neighborhood, somewhere, but I couldn't tell.

Q. You said you were invited to sit up with him one night, and what night was that? A. I can't tell the day of the month; it was in the fore part of November; this sitting didn't make such an impression upon my mind as to enable me to designate the date. 1383

Q. Have you any professional skill or any experience as a nurse or had you at that time? A. Only as to sickness in my own family.

Q. Was that experience you gained in your own family sufficient to enable you to act as nurse, in

your judgment? A. Well, I never did act in that capacity.

Q. Then you didn't go there that night to act as nurse in any sense? A. Oh, no.

Q. At what hour did you go there that night?

A. I think between—about half past eight o'clock.

1384 Q. Did you go by the invitation or request of any one? A. Why, the Colonel wanted me to come up and stay with him. That request was made to me personally. I was there and made the arrangements.

Q. You came there about eight o'clock to sit up with him all night? A. Yes.

Q. And during the evening several persons were in before they retired? A. Mr. Dwight was sitting up part of the time while I was there. He talked of both business and social matters; I don't remember anything else he talked of. He retired about ten o'clock; that is earlier than he would usually retire I think; his usual hour of going to bed was probably eleven o'clock; this night he went to bed about an hour earlier; I think about ten o'clock; I don't know what time in the morning he got up; I went away about seven or eight, perhaps eight o'clock; his usual hour of getting up was about eight or nine o'clock; he went to bed late and got up late generally.

Q. Did you pay any attention to his pulse that night you were there? A. No.

Q. Did you do anything that night you were there in regard to attending to him as a sick man?

1386 A. Oh, yes, sir; nothing more than to attend to his wants, that is about all.

Q. Did you administer any medicine? A. No, I think he took his own medicine.

Q. Did you see him take any medicine that night? A. I have no distinct recollection that I did.

Q. Have you any recollection that he had any

medicines there that night? A. Yes, I do not know what they were: there were a lot of vials on the table or stand—I mean several, four or five.

Q. Different colored liquors? A. I can't say about that.

Q. And how big were the vials? A. They were vials of about an ounce, called an ounce vial. 1387

Q. You had no direction or instruction that should lead you to scrutinize the medicines he had?

A. No, not at all.

Q. Had you any instruction from any physician as to doing anything for him that night? A. No.

Q. Now, between that time and the time that you saw him a day or two before his death (leaving out of your mind what Dwight said about himself entirely), did you notice or see anything in his physical appearance? A. Yes.

Q. State precisely what you saw in his physical appearance without characterizing it generally? A. It would become very difficult for him to go from his chair to the bed. 1388

Q. Did you know that to be a fact independently and apart from what he said to you? A. Yes, I don't know it because he said it.

Q. Did you know it apart from what Dwight said to you? A. Yes, I think I do.

Q. Does your knowledge extend to the power to tell whether a man is faltering and hesitating in his walk from an actual weakness or from a desire to do so? A. I am not an expert.

Q. Can you answer that question better than that? A. I can only say in this case I think I have knowledge enough. 1389

Q. You have knowledge in this case you did not have in any other? A. Yes.

Q. That is what you mean? A. No; I don't say that, for I do in other cases.

Q. You think you are able to tell from knowledge whether a man walks weakly from a desire

to do so or from actual weakness? A. I think I might.

Q. You are sure of it? A. I think so.

Q. Well, I guess we will let you describe the difference between a man who was endeavoring to walk weak and one who actually did from actual necessity? A. Well, a man that was trying to play it would be more apt to overdo it than a man who was struggling against weakness.

Q. Anything more? A. I don't know of anything more.

Q. Then your knowledge upon the subject of which we speak is derived entirely, in your estimation, from the amount of skill in which the man attempted to feign? A. Possibly so.

Q. Did you ever in your life see a man that was attempting to feign a sickness? A. Yes; several; this was in sickness; when they pretended to be sick; I have had more than one such case; have more than one in my mind.

Q. Then you are somewhat of an expert in that business? A. No; but I have had some experience in regard to that one thing.

Q. What doctor was attending upon Mr. Dwight during his illness? A. Drs. Burr, Dr. George Burr and Dr. Dan. Burr, and Dr. Orton.

Q. Who came there the most? A. Well, the Drs. Burr were there while I was there more than any others.

Q. Do you know whether either of the Drs. Burr kept notes of his various symptoms from day to day? A. No; I do not.

Q. Among the visitors you saw there during his sickness, was Mr. Neri Pine? A. I haven't any recollection of ever seeing Mr. Pine there, although he might have been there.

Q. Were there any other lawyers there visiting during his sickness, that you saw? A. I don't remember of any now.

Q. You have spoken about his losing flesh, in



your judgment, during this sickness ; do you know how much he weighed when he began to be sick ?

A. I don't know just how much he weighed ; I should think he weighed about 240 pounds ; that may be an over estimate, but he was a heavy man and weighed over 200, I should say, any way.

Q. When was it, according to your knowledge, that he began to be sick ? A. As I remember, it was five or six weeks before he died. 1393

Q. Does your memory also extend to remembering about the time he ceased in his efforts to procure life insurance ? A. I don't know anything about that ; I don't know when he ceased to make efforts.

Q. About how long was it after the time when you were paying part of his premium on life insurance before he first complained of being sick ?

Objected to on the ground that there is no foundation for the question. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted. 1394

Q. Did you give any checks for any part of his life insurance premiums ? A. I assume from what I learn here that the checks I have produced went to pay his premiums, but I didn't give them for that purpose, and I didn't know it at that time ; I made those checks payable, some of them to Mr. Pine's order and some to the order of Mr. Batchelder, whom I never saw. 1395

Q. After you gave these checks how long was it before you first heard him complaining of being sick ? A. It was a few weeks after that.

Q. You have spoken of hearing him cough at the time he had a cold ; when was it ? A. I can't remember the exact time ; I think it was three or four years before he died ; he was then living there

in Binghamton, in the Dwight House, as I remember it; it was in the winter.

Q. For how many weeks did you hear the cough?

A. I didn't hear it any weeks.

Q. How many days? A. I didn't hear it any days.

1396 Q. You didn't hear it at all, did you? A. Yes, I did; I cannot say on how many different occasions I heard it; I was not with him in Chicago.

Q. In the spring and summer of 1878? A. Yes, I saw him in Chicago in 1878, as I remember it.

Q. What time? A. I think it was in June, but I cannot tell.

Q. Wasn't Walton Dwight sick in Chicago at that time? A. No, not while I was there; I was there only two or three days; I went there after my family.

1397 Q. And you say he was not sick in Chicago at that time, and having Dr. Allan Brooks attending him? A. Not that I knew of.

Q. Did you live at the same hotel with him? A. Well, while I was there we stopped at our brother-in-law's, Mr. Coleman's.

Q. Both of you were living in the same house?

A. Yes; and he was not sick then, to my knowledge.

Q. How long before the third day of September was it Walton Dwight handed to you \$1,000 in bank notes? A. It was in August some time; I don't know the time exactly.

1398 Q. Did you make any entry of the transaction in any book? A. No.

Q. Wasn't that an unusual circumstance that you should have \$1,000 left with you and you give no credit for it? A. No.

Q. Is that your usual method of doing business?

A. Oh, no, but that is nothing unusual in business circumstances.

Q. Did you give him any due bill for it? A. No.

Q. Was anybody present when he gave it to you?

A. I think so ; I think Mrs. Dwight was there ; I think my family was there ; my wife was there ; it was in my own family ; I couldn't say, but I think it was in the evening.

Q. Hadn't Walton Dwight been in the habit of keeping a bank account? A. He had kept bank accounts, but I think at that time he was not keeping any bank account. 1399

Q. Do you know? A. I don't know that he was at that time.

Q. You knew that he had been in the habit of keeping a bank account? A. Yes.

Q. At the time he gave you that \$1,000 did he owe you anything, or you him? A. No ; not a cent.

Q. And with the exception of this \$1,000 you did not owe him anything after you received it? A. No, not that I recollect of.

Q. You and he had a conversation about this \$1,000 when he left it with you? A. Yes, we had a conversation about it, and I took the bills and deposited them in my bank ; and as directed by him afterwards, I gave checks until I had completed the entire amount of the \$1,000 ; those checks went to pay insurance policies ; I have not the slightest knowledge where he got this \$1,000. (Checks shown witness.) Those are the same checks I refer to. 1400

The counsel for the defendants read in evidence the eight checks referred to by witness. They were together marked Exhibit 100.

Q. Where did you deliver these checks to Mr. Dwight? A. In my office ; I think there was no one else present at the time I delivered him the checks, but I do not remember ; Mr. Dwight came in for them himself ; I am not positive whether the Colonel came and took the checks himself or whether he told me how to make them out, and whether he or Mr. Pine came and got them. It is my recollection I gave Mr. Dwight the checks that went to 1401

Batchelder, and that I made out the checks that he told me to give to Mr. Pine, and Mr. Pine came and got them. I have that recollection about it. I made out the entire checks at his request at the same time, at the interview when he came for them. Seymour Coleman was the person with whom Dwight and I stayed while in Chicago. He lived on Indiana avenue, No. 3,200 and something; I can't remember the number exactly. Dwight lived in one of his houses in Dwightville before he moved into the hotel; he lived in the one on the north end of the block; it is on Front street, on the corner of Front and Dickinson street, and of Winding Way. I don't know how long he lived there, a year or two; before he lived in that house on the corner of Front and Dickinson streets, he had rooms, as I remember it, over the First National Bank, that was on the corner of Washington and Court streets.

1403 Q Is this Mr. Seymour Coleman, with whom you and Dwight staid while in Chicago, the brother-in-law, and one of the persons named in the Dwight Will? A. Yes; he is a brother-in-law.

*Re-direct-examination by Mr. Newton :*

Q. Are you familiar with the cost of building in the city of Binghamton, and were you during the years Mr. Dwight was putting up Dwightville? A. Yes, somewhat. I have done some building myself. I have built fifteen or eighteen houses in Binghamton. I knew the cost of lumber and material at that time, or about its cost.

1404 I was present at the post-mortem examination when Dwight's body was opened; during the whole of that operation I stood near the body; I remember that before the body was opened attention was called to some folds or creases in the neck of Mr. Dwight. I heard Dr. Ayer say something on that occasion about them. I know Dr. John Swinburne.

Q. Did you hear Dr. Swinburne say in substance that he thought those folds were caused by bending the head and neck backward?

Objected to as incompetent, and as calling for hearsay evidence; and also on the ground that the question assumes that testimony was given which, in point of fact, was not given. The Court overruled the objection, to which ruling counsel for the defendants duly accepted. 1405

A. I didn't hear him say that.

Q. Did you notice the folds in the neck? A. I noticed a crease on the left side of the neck; yes. I noticed nothing about the color; it was three or four inches in length, and perhaps one-eighth of an inch in breadth; that is my judgment about it. I did not see the body of Dwight after his death and before he was placed on ice. 1406

*Re-cross-examination by Mr. Russell:*

Q. The counsel has been particular to call your attention to the mark as a "fold"; do you lay any stress on that in giving your answer? A. I don't know that I have used that term; I used the term crease.

Q. Did you intend to use the term fold yourself? A. I never thought anything about it till now.

Q. Did you pay any especial attention to the length or depth and width and color of this indentation? A. I looked at it. 1407

Q. (Question repeated.) A. No.

I heard of the death of Walton Dwight about two o'clock that night; word was sent to my house; some one came and told us; I don't know who.



NERI PINE, called as a witness on behalf of the plaintiffs in rebuttal, and sworn, testified as follows :

*Examined by Mr. Newton:*

1408 I reside in Binghamton, and am a lawyer by profession ; I knew Walton Dwight ; I made his acquaintance in boyhood ; in his boyhood he was living at his father's house in the county of Broome and town of Windsor, three or four miles from the village of Windsor, on a farm ; my boyhood was spent in the town of Colesville adjoining the town of Windsor ; down to 1857 or 1858, I had known him as he grew up ; he was a little younger than I, and from that time I don't recollect of seeing him until I moved to Binghamton in the spring of 1868. He was residing then in the city of Binghamton ; I was well acquainted with him from that time till  
1409 his death ; I met him every week and every day as we casually met upon the street, and in business places—we met here and there ; he was a man of more than usual size ; he was a large man, standing over six feet in height, of broad shoulders ; his shoulders laid out square, and neck rather short than long, with a pretty large head ; carried slightly forward ordinarily ; a man of very large size around the chest—under the arms—and of a large body and large heavy hips and legs, and a long, large arm, and an unusually large hand ; a man large in every direction and make up.

Q. Before his final sickness did you ever know  
1410 him to be sick ?

Objected to as incompetent and immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. Not of my own knowledge. I never saw him spit blood ; I have no recollection of ever having

heard him cough ; his voice was unusually heavy and strong. I took charge of the bankruptcy proceedings that have been introduced in evidence here, as solicitor.

Q. Can you give the date of the report made by Mr. Bowe, the Register in bankruptcy ? A. I can.

1411

Q. What was the date ?

*Mr. Russell.*—We object to it on the ground that the report is the best evidence.

(Report produced and paper handed to witness.) That is a copy of the report.

The counsel for the plaintiffs offered the copy report in evidence, so far as it fixes its date.

*Mr. Newton.*—So far as it gives its date I put it in evidence. Mr. Bowe was unable to give the date.

1412

*Mr. Larocque.*—If the gentlemen say that that is a true copy of the report we do not object to it on that account.

*Mr. Russell.*—Is this report offered in evidence ?

*Mr. Newton.*—Simply so far as it fixes its date.

*Mr. Larocque.*—I suppose that if the report is put in, the whole of the report must go in.

*Mr. Newton.*—We do not care to load the evidence with the report.

*Mr. Russell.*—The objection is that if they offer this paper in evidence they must offer it as a whole, and that the simple reading of a line at the bottom of a paper whose purport is not manifest, because it is not evidence is entirely immaterial.

1413

*The Court.*—They may put it in evidence for the purpose of fixing its date.

Exception taken.

*Mr. Newton.*—I so put it in evidence.

*Mr. Russell.*—May we use it for the different purposes of the case?

*The Court.*—I will rule upon that when it comes up.

*Mr. Russell.*—Of course, it becomes necessary  
 1414 for us to know whether the paper is in evidence in order to determine whether we shall make any further offer of it.

*The Court.*—I will not say in regard to that. They have offered it for that purpose.

*Mr. Newton.*—The date of the report is as follows: “Dated, Otego, November 4th, 1878. L. E. Bowe, Register in Bankruptcy.”

Q. Mr. Pine, who informed, if any one, to your knowledge, Mr. Dwight that this report had been made? A. I did; my recollection is that it was  
 1415 on the 6th day of November, 1878; I carried it to him at that time, this paper that you have here. I got this report from Mr. Bowe by mail.

Q. After getting it, before you handed it to Mr. Dwight, had you disclosed to any person whatever that you had received any report? A. I think I had, to Orlow W. Chapman—not to any other person, I think—have no recollection that I did. I was here at the time that Mr. Harding was sworn; I received from Mr. Harding a policy such as that which was sent to him by Peck and Hillman, from the Connecticut Mutual. (Exhibit No. 8 shown witness.) I have seen that policy before or one  
 1416 like it. I find no mark upon it by which I could positively identify it as being the policy. I received one from that company and for that amount, and with a letter such as that copy letter attached. I first saw it very soon after the policy bears date; immediately upon Mr. Harding's receipt of it, I think. The first that I saw of that policy Mr. Harding brought it to my office and left it with me. Mr. Harding brought in the policy and said that

he had a life insurance policy for Colonel Dwight, which he was directed by Colonel Dwight to leave with me, and that he should call there and get the premium—he left it then.

Q. Can you tell how long you held possession of it? A. It was there for two weeks, I should think; from a week to two weeks; it was there with me quite a time. 1417

Q. At the time you received that policy from Mr. Harding, were you very busy? A. I was engaged in my work in the office, making up petitions in bankruptcy for various parties.

Q. The last days were near at hand to draw those? A. They were; they had to be filed on the 31st of August; and that was Sunday, so the last petitions could be filed only on or by the 30th of August. I knew Mr. D. C. Vosbury; I received from him a policy about the 20th of August, 1878, in my office—the same place where I received this other one; there was a conversation between me and him about the policy at that time; he said he had a policy of insurance on the life of Colonel Dwight, which the Colonel directed him to bring to me and leave with me, and call there and get his money for the premium; I said “all right, leave it until the Colonel comes around,” and he turned to go out, and I called to him and said, “how soon will you have to have the money for that? How soon do you make your monthly report?” I told him to leave it until the Colonel came in; he says, “any time before I make my report.” I asked him at what time he made his monthly report, and he said, “Oh, the fore part of the month; from the 5th to the 10th; any time before that would answer his purpose;” that was the policy of the Mutual Life Insurance Company of New-York; I subsequently returned that policy to Mr. Vosbury; my recollection is very distinct that it was on the 27th day of August that I returned it; I went to Syracuse the night before to attend the United States 1418 1419

District Court on the morning of the 27th in Syracuse—and came down on the afternoon train; left Syracuse between one and two o'clock, and reached our office at five o'clock; my recollection of the conversation between Mr. Vosbury and myself with regard to that policy is, that he called to me with regard to it when I was going up the steps of the building in which my office is, when I came home that day; a few minutes after five o'clock, perhaps, I handed it to him; he came across and went up stairs with me and got the policy; I don't recollect whether there was any reason or suggestion made for his calling for it at the time; he said he wanted that policy in the Mutual Life, and I suggested that he should leave it until the Colonel returned, and see what arrangement could be made about it; he said no, he wanted it then; I do not think he stated to me the purpose for which he wanted it; at all events I returned it then; during the last sickness of Walton, I was at his room sometimes every day, and sometimes there would be a day or two I didn't go up.

Q. I wish you as well as you can to describe Mr. Dwight as he was there, going along through his line of sickness as to his appearance?

*Mr. Russell.*—We object to the question in so far as the evidence attempts to give anything but appearances which were observable by an ordinary person, not the conclusion of the witness.

*The Court.*—You don't ask for his conclusion I suppose.

*Mr. Newton.*—No, sir.

*The Court.*—State the facts.

*Witness.*—When he was first confined to his room, and did not come down town, I could see that he looked but little different from what he had before that; then, as I went up there every day or two, noticed that he was losing color—his



face was—and that his eyes especially were looking dull, and the whites of them cloudy, muddy, a yellowish cast to them ; and his face wore more of a pinched, narrowing look as the days went on ; seemed to be, looked to be, losing flesh and vitality or life.

The counsel for the defendants there- 1423  
upon objected to the characterization of the appearance of Dwight by the witness, as incompetent, and also on the ground that the witness has not been shown to be qualified to express an opinion on the subject, and on those grounds moved that the answer of the witness on this subject be stricken out. The Court overruled the objection and denied the motion, to which ruling the counsel for the defendant duly excepted.

That continued down to the last time I saw him, 1424  
looking thinner, and his face more shrunken, settling apparently ; during the earlier part of his illness he was usually sitting up when I went there ; in the latter part of it he was lying in bed ; I did not assist at any time in taking care of him, more than a casual helping hand when I was in there in the course of the day ; I never sat up with him a night and took care of him.

Q. Speaking of that casual assistance, what assistance did you render him ? A. Oh, but once or twice—once that I recall especially, I helped him from his bed to walk out into the sitting room ; he 1425  
walked out by putting his hand on my shoulder and my supporting him ; I do not recall seeing him at any time removed from his chair to the bed.

Q. Did he sign any papers in your presence during his sickness ? A. He did.

Q. How did he sign—describe how he signed ? A. Well, he was raised up in the bed and the pillows put behind him, and propped up there, and

then a book or something was given him, and the paper laid on that, and he signed it there sitting in bed.

Q. Did you help raise him on any of those occasions? A. I did at that time, or on that occasion; I raised him up at that time.

1426 Q. On more than one day during his sickness, did he sign any papers, that you saw? A. I do not now recall any other; that was the 15th of November, 1878, between nine and ten o'clock in the morning, very soon after nine o'clock; Mr. Charles W. Loomis was not there with me.

Q. Under your direction did he subsequently go there?

Objected to.

*The Court.*—You may answer that; to which ruling the counsel for the defendants duly excepted.

1427 A. I understand that he did; I directed him to go; the paper was returned to me verified; at that same time Mrs. Dwight also signed papers; they were all brought down by me and handed to Mr. Loomis with the request that he go up there; on that morning I had a conversation with Mr. Dwight.

Q. State whether on the morning of that 15th day of November, 1878, he made arrangements with you relative to going to New-York to pay the approaching premiums on his policies, and if so, what arrangements?

1428 *Mr. Russell.*—I object to the question as incompetent in itself, as hearsay evidence. The declaration of the deceased in his own favor. Secondly, That the method by which the alleged fact is sought to be proved is incompetent as an attempt to characterize the effect or conclusion of the conversation between the parties by this witness; whereas, the facts must be stated by him in order that

we may judge of the effect of the arrangement.

*The Court.*—He may ask that. To what date do you refer?

*Mr. Newton.*—I call his attention to the fact that he was there that morning, the 15th 1429 of November.

*The Court.*—Now you ask him if at that interview he made arrangements with Mr. Dwight.

*Mr. Newton.*—Yes, sir.

*The Court.*—He may state what was said and done in that respect without characterization.

*Mr. Russell.*—I would like to have, your Honor, a direct ruling upon this question, in order that we may know whether this question now asked is allowed or not. Your Honor can see that this is somewhat of an important matter, and I want to know precisely what the ruling is. My objection is to this form of question. 1430

*The Court.*—I have sustained your objection to this form of question, so far as it characterizes or seeks to characterize it.

Q. Under the direction which the Court has given state what was said and done?

*Mr. Russell.*—That is objected to as incompetent, as a transaction between the client and his attorney, hearsay and immaterial. 1431

*The Court.*—Objection overruled.

*The Witness.*—Will the stenographer read the question?

The stenographer read as follows:

"Under the <sup>whole</sup> direction the Court has given, state <sup>what</sup> was said and done."

1432

*Mr. Russell.*—Of course your Honor's ruling covers their right to show what was said. The question is conjunctive "*and done.*"

*The Court.*—Yes, sir.

*Mr. Russell.*—We especially except to that portion which allows what was *said* to be given.

*The Court.*—You have an exception to all of it, every bit of it. Of course it comes again to that question of self-serving declarations we were talking about, but in this connection I think that is competent. Proceed.

1433

A. I had in my hands that morning a letter from Mr. Bachelder, calling my attention—

*Mr. Larocque.*—We object to that.

*Mr. Newton.*—No matter about the contents then at present.

*The Witness.*—I called Col. Dwight's attention to the fact that those premiums—

*Mr. Russell.*—Wait a moment; I object to the form in which the witness is testifying.

*The Court.*—Just give what you said.

1434

*The Witness.*—I could not assume at this time to give the precise words which I used, but I said to him in substance that these premiums were becoming due, and asked what arrangement was made to meet them. His reply was, "I expect Mr. Dusenbury over to-morrow" (that was Saturday), "if he does not come over in the forenoon, I want you (meaning me) to go over there in the

afternoon and see him, and make arrangements for the money to pay these premiums which are becoming due, so that you can go to New-York and these various places where they are to be paid, and pay them as they become due. If you conclude the arrangement on Saturday, you can go to New-York on Sunday night; if it has to go over until 1435 Monday, then you can go down on Monday night and be there in season for the first ones which become due." I said to him that I would go over if Mr. Dusenbury did not come over. I know Mr. Dusenbury; his full name is George Dusenbury, the father of Mrs. Dwight.

*Cross-examined by Mr. Russell:*

I am a lawyer; have been such since May 4th, 1868; I think I was admitted to the bar then; I was fifty years old on the 11th of June last; I was admitted to the bar at about the age of thirty-five 1436 years, just before I was thirty-five. I was a blacksmith by trade, from the time I was a boy. My father was a blacksmith, and brought me up in the shop. From April 1st, 1861, until September, or about September 1st, 1867, I lived at Centre Village in the town of Colesville, County of Broome; I moved there from the village of Nineveh, three miles above where I had resided from about the 1st of November previous. Before that time I had lived for about three years at what is known as Yale Settlement, in the town of Gilford, in Chenango County; and that was the commencement of my housekeeping for myself. I came to Binghamton to live in the first part of May, 1868, and have resided there since. I am one of the beneficiaries under the will of Walton Dwight to the extent of a thousand dollars; I did not prepare that will; the Colonel drew it substantially himself, as I understand. 1437

Q. What lawyer put it into shape? A. Benjamin



N. Loomis, Judge Loomis, as I understand, and the will, I believe, is in his handwriting.

1438 Q. In the various business that you had to perform for Colonel Dwight, you acted as attorney in the bankruptcy proceedings for himself and his wife, and also as his attorney in these various insurance matters, did you? A. I acted as the attorney for him and his wife in the bankruptcy proceedings, and I don't know whether you would say I was acting as his attorney in this insurance.

Q. I don't want what I would say. Were you, or were you not, the attorney of Walton Dwight in this insurance scheme of his? A. No; I was not.

1439 Q. Were you his attorney in relation to the life insurance business commencing about the 1st of August, 1878, and culminating on the 15th of November, 1878? A. I acted for him in several of those matters.

Q. Is the word "Attorney" a word that you understand, Mr. Pine? Can you give a direct answer to that? A. I think I do; I think I understand it.

Q. Were you his attorney in relation to the life insurance business commencing about the first of August, 1878, and culminating on the 15th day of November, 1878? A. Then, with my understanding of the meaning of the term, I say no.

1440 Q. Then, in what you did for him in relation to the insurance business, you did not act as an attorney? A. Not within my understanding of the meaning of the term.

Q. Did you act as an agent? A. Yes; so I understood it.

Q. An agent, and not an attorney? A. Yes.

Q. In the pursuit of your business as an agent, and not as an attorney, in relation to this insurance matter, did you have occasion to give him legal advice? A. I do not think I did.

Q. Did you have occasion to give him no legal

advice in relation to the application, or to the terms of the policy? Try and give a direct answer to that, please? A. I do not now recall that I did.

Q. Did you examine, yourself, either of the policies left at your office by Lowell Harding, or the other one, left there by Vosbury? A. Yes, I did.

Q. Did you examine that as an agent or as an attorney? A. I don't know as I could distinguish; I read the policies and the applications. 1441

Q. Are you able to say whether you examined those policies as a lawyer or not? A. I do not get the drift of your question, where you draw the distinction.

Q. I don't draw any distinction; I ask you whether you examined those policies as a lawyer, in order to give advice as to their form, or whether you did not? A. I examined them as left with me; I don't know as it was as a lawyer or as an agent. 1442

Q. Did you examine those as a gentleman learned in the law for the purpose of ascertaining the form and sufficiency of those instruments? A. I do not think I did specially; I read the policies and applications.

Q. Did you do it for the purpose of ascertaining as a lawyer, as a person who knows about such matters, the sufficiency of those policies—is it impossible for you to answer the question? A. Yes, I think I did.

Q. Did you, as a lawyer and a person skilled in the law, find any fault as to the sufficiency of either one of those policies or the applications that preceded them? A. Yes. 1443

Q. Which one? A. The Connecticut Mutual Life Insurance Company policy.

Q. To whom did you communicate that fault which you found with the form and sufficiency of this Connecticut Mutual Life Insurance policy? A. Not with the policy but with the application.

Q. Then you correct your answer? A. You included the application in your question, as I understand it.

Q. Then I understand you to say now that you did not find fault with the form of the policy, but with the form of the application referred to in the  
1444 policy, and which accompanied the policy and formed a part of it? A. Yes.

Q. (Paper handed witness.) That copy of the application is attached to the policy? A. Yes.

Q. And the fault that you found with this application which formed a part of the policy, and was attached to it, you observed the first time that you had an opportunity in this great press of business that you have spoken of, to examine them both?  
A. Yes.

Q. To whom did you communicate the fault that you found with the policy? A. Mr. Lowell Harding, the agent, and to Colonel Dwight.  
1445

Q. How soon after you received the policy did you examine it in connection with the application?  
A. Not within a day or two after that; perhaps three or four days.

Q. Is your memory clear and distinct as to the time? A. No, it is not.

Q. What fault was it that you communicated to Lowell Harding, that you found with the application forming a part of the policy? A. That the letter, or copy letter, which was attached to the application and made to form a part of it, as I understood, did not correctly state the insurance  
1446 which Colonel then had, or previously had, upon his life.

Q. Was that the only fault which you found with the Connecticut Mutual Life application? A. That was the only thing which I now recollect.

Q. Then the fault was not in the application itself, but in the copy of the letter from Walton Dwight, which was attached to the application  
A. Yes; not a blank which was filled in, but in

the letter which is attached, and which is marked "Copy" and dated "Binghamton, N. Y. August 12, 1878."

Q. You found fault with this letter on the ground that that letter of Mr. Walton Dwight did not state the fact as it existed? A. Yes.

Q. (Exhibit No. 95 shown witness.) Is the signature of Walton Dwight per Neri Pine, in your handwriting? A. It is. 1447

Q. Did you deliver to Mr. Dwight yourself the letter for which this is a receipt? A. I could not say.

Q. You could not say whether you delivered it to him or whether you retained it yourself? A. I either delivered it to him or sent it to him, I did not retain it myself.

Q. (Exhibit No. 100 shown witness.) I show you the check of \$100 to the order of Neri Pine, No. 157, also check No. 156 and No. 159 and No. 158, as the checks are numbered, and ask whether you received those checks spoken of, collected the money upon them and indorsed the checks? A. Yes, I did; the indorsements of those in my name are in my handwriting. 1448

Q. To whom did you deliver the currency received upon those checks? A. My recollection is that I deposited the checks in my own bank, the Susquehanna Bank, and that the bank credited them to me.

Q. Does your personal knowledge extend any further as to what was done with the proceeds that came to you from the deposits you made in the bank? A. Yes. 1449

Q. Have you any memorandum so you can give us the dates when you accounted to any body for those various sums or when you used them? A. I can give the dates when I used them, from memorandum I have here. I have all the checks I drew against them, I think. (Same produced.)

Q. Can you tell me from whom you received the

four checks from Mr. McDonald that are included in Exhibit 100—the four checks Mr. McDonald made payable to your order? A. Yes; I couldn't tell whether I got them from Mr. McDonald or whether Col. Dwight brought them to me.

1450 Q. Nor can you tell where you received those checks? A. No, I don't think I could.

Q. How long after the date of the various checks? A. It was very soon afterwards. I don't know as I could tell the exact date, but it was not long afterwards.

Q. Within a week or so? A. Within three or four days, or a week at the outside. My recollection is I received two of them at one time and two of them at another time; \$200 at one time and \$200 at another time, that is my recollection of it.

Q. Are the checks you have handed to me a portion of the proceeds of the checks of Mr. McDonald?

1451 A. Yes.

The counsel for the defendants then introduced in evidence the checks referred to by the witness, as having been drawn by him against the deposit of checks received by him from Mr. McDonald; they were marked Exhibits Nos. 101 to 105 inclusive.

Q. Did you advance for Col. Dwight any moneys out of your own pocket for the payment of any of these insurance premiums? A. I did not.

1452 Q. Where did you get the excess of the amount paid out by these checks over and above the amount received from Mr. McDonald? A. There was a note of Col. Dwight discounted by the Susquehanna Bank and passed to my credit, which makes up the difference I believe.

Q. And who was the indorser on that note? A. I was the first indorser.

Q. Was there any one behind you? A. T. F. McDonald behind me.

Q. (Paper handed witness.) I show you an additional check of \$86.50; was that also paid for insurance premiums? A. Yes.



The check last referred to was then introduced in evidence ; it was marked Exhibit No. 106.

Q. From whom did you receive the money on that check of \$86.50 wherewith to pay the premium ? A. Walton Dwight, in currency.

Q. When was the bank account opened upon which you drew these checks ? A. Very soon after I went to Binghamton. The first bank account I had there, and substantially the only one, I have ever had has been with this same Susquehanna Bank, and this was no separate account. 1453

Q. And is this check of August 28th, 1878, the first check that you drew for the payment of premium ? A. Yes ; that was the first check that I gave for the payment of any premium on life insurance.

Q. You have no personal knowledge, have you, of the date when Mr. Harding himself received this policy ? A. No, I have not.

Q. After he left this Connecticut Mutual policy with you, did you and Mr. Harding have some negotiations about the correctness or incorrectness of the application ? A. We had no negotiations ; no. I had a conversation with him in regard to it ; the final conversation that he and I had upon the subject was on the day on which he came and got the policy to return to the company. 1454

Q. Was there any correspondence between you and him, or any correspondence between him and the company, in the meantime, which was exhibited to you ? A. No, none whatever, except the telegram he had when he came after the policy. The telegram which he had in his hand when he came to me for the policy ; he had the telegram from the company ; I couldn't say whether he showed me the contents of it ; he had the paper folded up in his hand ; he either showed me the telegram or stated the contents to me. 1455

Q. Down to the time you handed back Mr. Harding the policy, had the changes which had been

suggested by you in regard to application been made? A. I could not say; I do not know of any.

Q. Was there any premium ever paid upon that policy to your knowledge? A. No, not to my knowledge.

1456 Q. When was the note you received of Mr. Dwight discounted? A. My recollection would be now on the 10th of September.

Q. Was that the first time he had paid you any funds for the payment of any premiums? A. No, sir.

Q. How much had he paid you before that? A. This \$400 in McDonald's checks had been before that time.

Q. Any more than that? A. Yes; the \$86.50, which paid the first check which you put in evidence.

1457 Q. Anything more than that? A. I think that is all I can now recollect.

Q. You say this note was discounted on the 10th of September? A. That is my recollection.

Q. Have you that note among your papers; to whom was it surrendered? A. I couldn't tell; I do not now recollect.

Q. Do you know who paid the note? A. It was not paid; it is my recollection that it was taken up and another one given.

Q. Do you know who finally paid it, if anybody; do you know yourself? A. No, I don't know, myself.

1458 Q. When Mr. Vosbury left with you the Mutual Life policy, did you at once examine it? A. No.

Q. How long before you did examine it? A. It was two or three days before I did examine it, and gave it any attention. I put it in the safe we had in my office.

Q. Did you, after examination of that policy, find any fault with that policy? A. No.

Q. Did Mr. Dwight? A. Yes.

Q. What was it? A. That it was not such a policy that he understood it was to be, and didn't want that kind of a policy.

Q. Did you communicate that to Mr. Vosbury?  
A. My recollection is that I did not at first.

Q. And the precise difficulty that Mr. Dwight found fault with was that it was payable in fifteen years? A. That the premiums were payable in fifteen years, and the policy not payable until his death. 1459

Q. And that premiums being payable in fifteen years and then stopping, made the yearly payments larger than they would have been if payable during the life? A. Yes.

Q. Do you know, of your own knowledge, whether Mr. Dwight communicated with the general agents of the company as to that? A. I do not.

Q. Did you? A. I did not that I have any recollection of now. 1460

Q. How soon after Mr. Dwight advised you that that was not such a policy as he wanted was it that you re-delivered the policy? A. It was two or three days afterwards. I gave that back to Mr. Vosbury, and no premium was ever paid upon that, to my knowledge.

Q. At the time you visited Mr. Dwight on the morning of the 15th of November, was it before he had got up? A. Yes.

Q. Have you in your possession the paper he signed that day? A. Yes. (Produced.) That is the paper. 1461

The counsel for the defendants introduced the paper produced in evidence; it being an answer in foreclosure suit brought by the superintendent of insurance; it was marked Exhibit No. 107.

Q. Was there any other paper signed by Walton

Dwight that day, to your knowledge? A. I do not recollect of any other.

Q. And accompanying this answer of Walton Dwight you sent at the same time the petition and affidavit for a discharge to be signed and verified by Mrs. Dwight? A. I did.

**1462** Q. Was it at this interview that he had the conversation with you about the insurance premiums falling due? A. Yes, it was.

Q. I want you to give with precision, as near as your recollection will serve you, the entire conversation between you and Mr. Dwight in relation to his life insurance premiums, that you have spoken of in your direct-examination? A. The first thing said with regard to it was my calling his attention to a letter which I had from Mr. Batchelder, which I received that morning, with the premiums—I read the letter to him; then I said to him substantially, that it was necessary that arrangements be made  
**1463** very soon to meet those premiums as they were now nearly due. He replied that he had been thinking of that before, and was going to make arrangements with Mr. Dusenbury, his father-in-law, George, I think he called him—to get the money from him to pay them, and he says, “I think he will be over here to-morrow forenoon, Saturday, and if anything should happen that he should not come, I think you had better go over there in the afternoon and see him in regard to it, and if he does not come here, you come up and I will tell you further in regard to it. If you go over on  
**1464** Saturday—if you can perfect an arrangement with him at once, he can give you drafts on New-York and then you could go to New-York on Sunday night; if you can’t complete it then you can have him come over on Monday and we will fix it, and then you can go down on Monday night and that will still be in time.” I said to him that I would make my arrangements so as to go over on Saturday, if necessary. It was left there substantially.

Q. Is that all the conversation that you had with Mr. Dwight on the subject? A. Substantially all.

Q. Was it in that conversation stated or called to Mr. Dwight's attention the day when the quarterly premiums would be payable? A. I think he mentioned that himself.

Q. What day did he say? A. It was the 19th of November—the first. 1465

Q. At that time had you any funds in your hands belonging to Mr. Dwight to make any further payment on the premiums? A. No, not of any amount; my recollection is that there was a balance of five or six dollars in my hands, but nothing of any amount.

Q. Then, according to your knowledge all the money he had in the world to meet the quarterly payments coming due for premiums to keep the policies in force on the Tuesday following, was the sum of five or six dollars? A. Yes, to my knowledge; all that I had any knowledge of. 1466

Q. Did you, of your own knowledge, know of any agreement whatever, with Mr. Dusenbury to advance one single cent of the premiums coming due? A. I did not.

Q. When did you first hear of Mr. Dwight's death? A. The morning after he died.

Q. What time in the morning? A. When I got up; it was half-past six o'clock, perhaps.

Q. Did it surprise you? A. It did very much indeed.

Q. Then I infer you saw nothing in his appearance the day before when you saw him, that indicated any appearance of approaching death? A. No, not immediate death. 1467

Q. You have stated something in regard to your connection with the bankruptcy proceedings; was not the prosecution of Mr. Dwight in bankruptcy a friendly proceeding? A. Yes, on behalf of the creditors, for the express purpose of enabling him to obtain a discharge of his debts.



Q. Wasn't the prosecution of Mrs. Dwight also a friendly proceeding designed to the same end?

A. A voluntary proceeding on the part of Mrs. Dwight; it was a petition filed by Mrs. Dwight herself; that was done for the same purpose—of obtaining a discharge for Mrs. Dwight. I acted as  
1468 attorney for Mrs. Dwight and Mr. Dwight in making the application for a discharge.

Q. (Paper handed witness.) I show you Exhibit number 21, Germania Life Insurance Company application, and ask you whether the signature to the certificate of "Friend" is yours? A. Yes, that was filled out in my office, I presume, although I have no recollection about it.

Q. Have you any recollection as to whether the remaining part of the application was filled out before you filled this, or whether it was a blank? A. I have no distinct recollection on the subject.

Q. Have you any distinct recollection whether  
1469 you read the entire application at the time you signed the certificate? A. I have no recollection on the subject at all.

Q. Have you any memorandum here as to the various proceedings in bankruptcy? A. No; I have copies of many of the papers here, my office copies I was subpoenaed to produce.

Q. Can you give me the date when you filed or registered your brief on the question of the discharge of Mr. Dwight? A. I could not, from any memorandum here or at home—I don't think I could. The brief I believe is here, but there is no  
1470 memorandum on it enabling me to fix the precise date when it went to the Register. (Paper produced by witness.)

Q. Was it on or about the 13th of July that you sent your brief? A. It was not far from that time; it would be my impression that it was a few days later rather than earlier. Mr. Chapman was counsel with me in the case; and joined with me somewhat in making the brief.

Q. And it is signed by him, is it not? A. The endorsement of his name is in my writing.

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NORMAN DWIGHT, called as a witness on behalf of the plaintiffs in rebuttal, and sworn, testified as follows: 1471

*Examined by Mr. Newton:*

I reside in Cowdersport, Potter County, Pennsylvania; I have lived in the State of New-York; I removed to Pennsylvania about 1848; I know Walton Dwight; I knew him from his childhood to manhood; he was a son of my brother.

Q. Did he at any time live in Potter County or in that neighborhood? A. He did from the time he was about fifteen or sixteen a considerable part of the time, until he went into the army at the age of twenty-five. 1472

Q. And in what capacity or position did he go?

Objected to as immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. He went out from Potter County as the captain of a company; when he first went there to Potter County he went there as a youngster in his father's business, and remained in that business with his father's directions until he was twenty-one. The business his father was in was lumbering, and that was the capacity he acted in up to then, and from that time his principal business was in the same direction with his father. 1473

*Mr. Larocque.*—This we object to, that it is immaterial and incompetent to say what direction a man's business was in, and we say he should de-

scribe his business, if it is important to know what his business is.

*The Court.*—He may briefly describe the business.

And the defendant excepted.

1474 It was the same kind of business his father was in, and part of the time on his own responsibility ; he bought and sold, and moved down the river by the floods in the spring, together with his father, as I stated before, large amounts of lumber up to the time of the breaking out of the war.

Q. What was his health during those years ; state whether he was sick ?

Objected to as incompetent. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

1475

A. His health was good, and I never saw him sick in bed during my acquaintance at any time.

Q. Did you ever see him spit blood ? A. No ; I have no particular memory of any special occasion at any time, but I think I have heard him during his life, cough. After he went to the army, he returned to Potter County. He was in that vicinity a large part of the time until he was married, which was not very long. He returned from the army in 1865, or rather in the last portion of the year of 1864, and in the winter of 1865 he was there again.

1476 Q. What was his health then ; state whether he was sick or not then ? A. Not at all ; I never saw him sick.

Q. Describe his personal appearance at that time, after coming from the army ? A. Well and healthy.

Q. After that, did you see him ? A. After he was married and left that region and located at Williamsport, I did not see him only occasionally.

I saw him after that when he came to my place, and in that vicinity, as I met with him at different times, and also after he returned to Binghamton. While he was living at Williamsport I saw him once in two or three or six months; I never saw him sick at any time from the time he was a child; I never saw him sick in my life. 1477

Q. And did you at any of those times see him spit blood? A. No.

Q. Did you know of his going to Canada and of his Canada operations? A. I knew from the man that surveyed his Canada lands.

Objected to as hearsay, and motion made on the part of defendants to strike the answer out. The Court denied the motion, to which ruling the counsel for the defendants duly excepted.

Q. You heard of his going? 1478

Same objection, ruling and exception.

A. I remember of seeing him soon after that; his condition of health after that was good.

*Cross-examination by Mr. Russell :*

Q. Haven't you said since you have been here at this term of Court that there was no doubt about his having had hemorrhages? A. No, I should think not.

Q. Why is it you are not sure? A. I am so 1479  
sure I have not stated any such thing to any person to my recollection. I said I never heard of it until after he was dead, to parties.

Q. Haven't you said, as a matter of public notoriety, that he had had hemorrhages? A. No, I have not.

Q. In the presence of any one? A. I should think I had not in any way.

Q. You should think so? A. I am certain I have not.

Q. And did you use the expression "I should think" because you were not sure? A. No.

Q. The counsel has spoken about Mr. Dwight's being in Canada; have you any knowledge as to how many times Mr. Dwight went to Canada? A. Only from his statements. I know nothing else; I have no personal knowledge of it; I was not there with him. I reside now in Potter County, in Cowdersport, the county seat; that is 150 miles from Binghamton; from Williamsport, I should think it was from 175 to 180 miles, perhaps a little over. I was not at Williamsport at any time during Mr. Dwight's stay there.

Q. Was he at Cowdersport at any time while you lived there? A. Yes, quite frequently; I said he was there from two to three months or six months; and when he lived at Binghamton I was there frequently; I should think about half a dozen times during the year he lived there.

Q. Was he at Cowdersport at any time while he lived at Binghamton? A. Yes, several times, I can't tell the number. He was married, I should think as near as I can remember, about 1866 or 1867. I came here on Monday night, a week ago last Monday night, and I have been here since. I am not one of the persons named in the will as a legatee; my wife is not, either, but my name appears in the will, though—my name appears in the will as a trustee for Orson Dwight, and for my sister and family.

*Re-direct-examination by Mr. Newton :*

Walton Dwight on his first trip went down there with me to Potter County, Pennsylvania, as an agent or under his father's direction; while he lived there with his father [until his majority he lived right in my sight all his life.



Q. And thus in sight until he went into the army? A. No ; after he went to Potters County, after about the year 1848, he was not there only a part of the time in my family, in my immediate notice and in the neighborhood : at different times he and his father's family, and his father, while there and in business, thus connected with the business, made it their home with me a portion of the time, at my place, after I had moved to the west 1483

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HENRY T. REYNOLDS, called as a witness on behalf of the plaintiffs in rebuttal, and sworn, testified as follows :

*Examined by Mr. Newton :*

My post office is Brookland, Potter county, Pennsylvania ; I knew Walton Dwight ; I was acquainted with him : I met him first about 1855, in the town of Hebron, Potter county, Pennsylvania ; from that time on and till he went to the army, we were nearly all the while together, lumbering ; I was at work for his father before he came there, and after he came there. I steadily staid along with them and went with him after he went for himself. We were taking pine forests and converting them into logs and putting them into the stream and taking some to Portville in this State ; we commenced rafting after we got through stocking in the winter at the upper mills, and had hauled the lumber from the mills to the banks, and I went with him on the rafts from April until we found ourselves at Paducah, Kentucky ; and this life continued until the war broke out. Once in a while an exceptional part of the winter and part of the summers we would not be together, for I helped carry on a farm during the summer season. I saw him in the army ; 1484 1485

I was in the same regiment ; we both went together on the 6th day of August, 1862 ; we were mustered in on the 16th of August ; we went a few days earlier to Harrisburgh. I remained in the army until some time in March, 1864 ; the regiment was the 149th Pennsylvania Volunteers : it was known  
 1486 as "The Second Buck Tails." For twenty months of the time we were in the army, or nearly the whole of the time, I was in command of the company he took out.

Q. How closely were you with him in the army ?

A. We were together constantly, except at the battle of Gettysburgh, until the 11th of the next February. From the 9th of July until the 11th of the next February, we were not much together ; otherwise we were. During the time before we went to the army, I often lodged with him, often ;  
 1487 all the while after we started our rafts we were together constantly ; while at home I was not lodging with him. I should say we were about 80 rods apart where he made it his home—when we were both at home—from my father's house. In the army we did not often occupy the same apartments.

Q. After the return after the battle of Gettysburgh ? A. The 11th of February next I returned to the command, and remained until we both resigned and came home in 1864 ; he followed me ; on March 13th, 1864, my resignation was accepted. After returning from the army I went with him to Elk county, Pennsylvania ; we remained together there one winter—the winter of 1864-5 ; he was  
 1488 only to the camp then occasionally. He made his home at the headquarters, at the Fallon House at Lockhaven. He would come and stay at the lumber camp for a week or ten days, and be away three or four weeks, and while in camp, when he came there, we were lodging together. After we left there we continued our acquaintance ; I was with him every few months ; I saw him at Williamsport. Those interviews continued until he left Williamsport. I

saw him at Williamsport all the way through the winters and springs of 1865 and 1866, and 1866 and 1867, and met him in Williamsport after he left there in October, 1868. That is the last time I saw him in our State, except at the county seat when he came visiting still later. In Williamsport I saw him at the Herdic House, now the Park Hotel—in both winters I have mentioned. I remember that I was there in the month of March, 1867; at that time I should say I was there ten or twelve days, staying at the City Hotel; I saw Mr. Dwight frequently during that time, at the Herdic House. One day he walked down to the corner of the park with me; that is the most I saw him out doors at that time. I didn't see him again until, I think, in October, I saw him at Williamsport, but that was a casual meeting; that was after he left Williamsport as his residence; I saw him once in Coudersport after that; I can't fix the year positively, but I should think in 1871 or 1872. 1489

Q. Now, at the time you mention in March, 1867, describe his condition of health at that time in Williamsport? 1490

Objected to on the ground that the witness is not competent to state. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. He was suffering from a bad cold at the time I saw him there. 1491

The answer of the witness was objected to as incompetent, and a motion made that it be stricken out. The Court overruled the objection, and denied the motion, to which ruling the counsel for the defendants duly excepted.

Q. Did you observe anything else in regard to his health than the fact that he was suffering from a cold? A. No.

Q. I wish you to tell me what the condition as to health or otherwise Mr. Dwight was in during all your acquaintance with him?

1492

Objected to on the ground that the witness is not competent to characterize it in this wholesale way. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. Very good.

Q. Did you ever know him to be sick? A. I have; I could not fix the exact dates. Mr. Dwight was sick for a short time in Cowdersport, at the house of Mrs. Ives, for a few days. I saw him sick about the house. I also saw him sick in Washington City; for a couple of days he was not about. That was during the time he was in the army.

1493

Q. Outside of that, what sickness did you ever know of his having at any time or any where? Do you know of his having any sickness? A. I do not; I never saw him spit blood at any time, any where; he had a heavy voice; I never knew it when it was not; in common conversation, it was heavy, loud and strong.

Q. In the army what was it? A. We sometimes thought it pretty loud.

1494

*Cross-examination by Mr. Russell;*

Q. Does your recollection extend so far as to say whether you cut any hemlock lumber? A. We didn't have any hemlock lumber, or handle any spruce; we handled pine—cut it up into planks or boards—I remember that.

Q. Do you remember going to war? A. Well, I have a slight recollection of it; I went in 1862, in the same regiment with Mr. Dwight; I resigned on the 13th of March, and he followed soon after.

Q. That was shortly before the battle of the Wilderness began? A. I so recollect it to be.

Q. You didn't go back to the army, either of you? A. No. 1495

Q. The camp of which you speak of being in, in the fall and winter, was not the camp of the soldiers of the army of the Potomac? A. No, it was a camp of lumbermen in the woods, where he was trying to make money.

Q. I would like to have you tell me particularly when you were in Williamsport, in 1866 or 1867? A. I was there in the spring of 1866 and 1867, and in the spring of 1865.

Q. Take the year 1867, I want to know particularly when you were there? A. It was in the month of March, somewhere from the 10th to the 20th. 1496

Q. Your entire visit was included in these days? A. No; I wouldn't say it was; I don't recollect exactly.

Q. Is it the best of your recollection it was? A. Yes; I forget how long it took me to settle up my accounts; I was boarding at one hotel and he at another; I couldn't say exactly; but I would say the hotels were a mile and a half apart; I was not at his rooms during any of the time when he was confined to his room.

Q. Have you now a present recollection of that single visit you made to his room during the time you were there then? A. No, I didn't go to his room. 1497

Q. Have you a recollection of a single interview you had with him at that time? A. Yes,

Q. Can you state where that interview was? A. In the reading room of the hotel.

Q. What was the hour of the day? A. I wouldn't



say whether it was forenoon or afternoon ; I know Mr. Smith went up with me ; I was there and saw him several times while I was there.

Q. How long an interview was that ? A. I would say maybe fifteen or twenty minutes.

1498 Q. Do you remember any other interview you had with him ? A. Only just speaking to him. I saw him there three or four times while I was down.

Q. Do you remember any other interview ? A. No, I don't remember any other that I could fix positively.

Q. You have no recollection now in your mind of any other time when you saw him, but think that you saw him three or four times ? A. Oh, I saw him other times, but I couldn't fix the exact time ; my hotel, I say, was the City Hotel ; I registered my name the day I got there, certainly.

1499

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HENRY C. HERMANS, called as a witness on behalf of the plaintiffs in rebuttal, and sworn, testified as follows :

*Examined by Mr. Newton :*

1500 I reside in Binghamton ; have resided in Binghamton about eleven years—ten to eleven years ; have been engaged in insurance. I was acquainted with Walton Dwight during those years. For about a year I lived very near his residence ; it was the first year I went to Binghamton to live—April, about ten years ago. I saw Mr. Dwight frequently ; when I was at home I saw him every day and sometimes two or three times a day. He was then residing in Dwightville. My recollection is he resided in a house at the corner of Front and Dickinson streets ; that house is north from the hotel, I think, directly north. It is the next house, I think, to the hotel building. After residing there, he next re-



*Risk approved, Dr. Charles Bernacki.*

It is requested that nothing be written on this side.

Germania Life Insurance Company, Number 287  
Broadway, New-York.

Application of  
for insurance on the life of *Walton Dwight*. Residence, *Windsor, N. Y.*

Number of policy, 69096 ; amount, \$15000 ; *One-fourth premium*, \$131.55.

Due *28th Nov., Feb., May and Aug.*

Term of policy, *Life*. Date of policy, *August 28, 1878*. Age, *41 years*.

Agent, *H. C. Hermans*.

sided in the Dwight block. While he was in the Dwight block I was often there—not every day, but I droppod in there quite frequently.

Q. (Exhibit No. 21 shown witness.) In whose handwriting was that application filled? A. I filled the application proper.

Q. (*By the Court.*) Did you fill the medical examiner's statement. A. No, the medical examiner usually filled the statement. 1501

Q. Not "usually"—that is not proper.

Q. (*By Mr. Newton.*) Who was the medical examiner? A. I don't remember; the medical examiner don't appear on the application. I sent a medical examination with this application at the same time I sent that paper.

Q. (Copy medical examination shown witness.) In whose handwriting is the filling in of that copy? A. I did not fill in the original. I made a copy of the medical examination that I sent with the application. That is the copy I hold in my hands. Mr. Pine's statement contained there is in his handwriting. "R. H. Root" at the top of that application is not in my handwriting. The "question to be answered by the agent"—"H. C. Herman's Agent"—is in my handwriting. All purporting to be signed by Walton Dwight in the application is in my handwriting; none of the endorsement is in my handwriting; I do not know in whose handwriting it is. None of the blanks in the endorsement were filled at the time I sent this application to the defendant. 1502

The counsel for the plaintiffs here read in evidence the endorsements upon the application. 1503

I am acquainted with the handwriting of Walton Dwight.

Q. The answer to question 3d "Amount to be insured," how was that written when you sent the policy to the defendant? A. It was written ten thousand dollars; in the first place in figures and then written out in full. I wrote the figures and

the words. There has been an interlineation upon that application since it left my hands. It looks like "or-fifte"—is all I can see of it. It is in pencil, not in my handwriting.

Q. Is it in the handwriting of Walton Dwight?  
A. I should say not. This is the first time I ever  
1504 saw that interlineation. I sent an application for ten thousand dollars and they sent a policy for fifteen thousand. Subsequent to sending this application I received a policy from the Germania Life Insurance Company.

Q. (Paper shown witness.) I show you a paper and ask whether it came in that envelope? A. This was the policy pocket in which it came, and was received by me at Binghamton. The writing upon that pocket was there at the time I received it from the mail as it is now; it is somewhat torn. There has nothing been written on it.

1505 The envelope referred to by the witness was introduced in evidence. It was marked Exhibit N.

Q. (Paper handed witness.) Upon these proofs of loss, presented by the defendant (Exhibit B), I call the attention of the witness to the agent's statement under date of January 16th, 1879; in whose handwriting is "H. C. Hermans" before the word "Agent"? A. My own; I made out that statement.

Q. (Paper handed witness.) State whether that  
1506 paper is a copy of the medical examiner's report which you enclosed to the company as part of the application, and with it? A. It is. (Marked [K] for identification.)

Q. At the time you made this application, had you any conversation with Colonel Dwight with regard to insurance by him in the Connecticut



Mutual Company and in the Mutual Life Company?

*Mr. Larocque.*—Will your Honor allow us to first cross-examine the witness in regard to his relations with this company, before this testimony is admitted?

*The Court.*—The defendant may examine on the status.

1307

*Cross-examination by Mr. Larocque:*

In the year 1878 I was the agent in Binghamton of the Phenix Life Insurance Company.

Q. In the month of August, 1878, you were employed by Col. Dwight to try and obtain \$100,000 insurance upon his life, were you not? A. He came to me for that purpose?

Q. Were or were you not employed by Col. Dwight for the purpose of obtaining, if possible, insurance to the amount of \$100,000 upon his life?

1508

A. I don't know that I could say that I was employed or not—as I understand the word “employed by him” I was not. I can't say that I was asked by him to place \$100,000 of insurance or thereabouts on his life. (Paper handed witness.) The body and signature of that paper are in my handwriting.

The letter referred to was introduced in evidence and marked Exhibit 108.

I suppose the company I refer to, in this letter was the Phenix Life Insurance Company, and that was the one company for which I held an appointment as agent at that time; the person referred to in this letter was Col. Dwight.

1509

Q. Is it not true that Col. Dwight wanted to obtain about one hundred thousand dollars on his life and had employed you or spoken to you on the subject? A. Well, I must have understood that he wanted to obtain that large insurance—that was my understanding at the time.

Q. Was this letter the first communication you

ever had with the Germania Life Insurance Company orally or written in regard to this question of an insurance on the life of Col. Dwight? A. I couldn't say positively. I cannot recall any other. I could not say when I received the answer to that letter. I think I received an answer—I think Mr.  
 1510 Chapman has it.

Q. (Paper handed witness.) I show you a telegraphic dispatch dated Binghamton, New York, 20th August, 1878, signed "H. C. Hermans, Insurance Agent," addressed to the Germania Life Insurance Company, and ask you if that is a dispatch you sent on that date? A. I don't remember that now. I don't remember that I sent any dispatch.

Q. (Paper handed witness.) I show you the letter produced by Mr. Chapman in answer to your suggestion that you handed your correspondence to him, and ask you if that is the letter to which you  
 1511 refer as an answer to the letter of the 16th? I should say it was.

The letter referred to was introduced in evidence, and was marked Exhibit 109.

Q. (Paper handed witness.) Will you look again at the telegraphic dispatch which I show you, and say whether you can identify the dispatch as the one referred to? A. I have no recollection of sending the dispatch.

Q. What dispatch does the letter of the 20th, acknowledging the receipt of the letter of the 16th and telegram of the 20th, refer to? A. I don't  
 1512 know of any other than that; I don't remember that there was any other dispatch, and I don't remember this—I don't remember sending a dispatch, at that time—that is all I can say.

Q. With, now, your letter of the 16th, and the reply of Mr. Doremus of the 20th, referring to the letter of the 16th and the dispatch of the 20th, are

you not able to say whether or not you sent a dispatch of the character of the one shown you? A. Well, I can't remember sending a dispatch.

Q. (Paper handed witness.) I show you another telegraphic dispatch, addressed by H. C. Hermans to the Germania Life Insurance Company, under date of August 22, 1878, and ask you whether or not that is a dispatch which you sent on that day to the Germania Life Insurance Company? A. I can't remember sending a dispatch now; I don't remember whether I sent a dispatch of that kind or not. 1513

Q. You don't remember whether you sent such a dispatch or not? A. No.

Q. (Paper handed witness.) I show you a letter dated Binghamton, N. Y., August 22, 1878, addressed to C. Doremus, Esq., and signed "H. C. Hermans"—in whose handwriting is that letter? A. It is mine. 1514

The letter last above referred to by the witness was then introduced in evidence. It was marked Exhibit 110.

Q. Now, Mr. Hermans did you send the application Exhibit No. 21 enclosed with that letter? A. I suppose I did.

Q. (Exhibit No. 110 handed witness.) Endeavor to refresh your recollection by reading your letter, and see whether or not you are now able to say whether you did or not? A. I think I did.

Q. Is that your recollection that you did? A. From reading the letter I should say the application accompanied it, that is all. 1515

Q. Have you no recollection on the subject. A. No further than that.

Q. Have you anything in your mind which suggests that in this case you departed from your habit and wrote a statement which was not true? A. I have not, sir.

Q. (Paper handed witness.) I show you a card of the Merchants' National Bank of Binghamton, N. Y., and ask whether that is a card which you sent with the application enclosed with the letter to the Germania Life Insurance Company? A. I don't remember sending the card.

1516 Q. Have you any recollection on the subject. A. I have not.

Q. Refer to your letter again and see what you said there on the subject of this bank as a proper one to receive the premium for the company, and then see whether you recollect you sent the card? A. I have no recollection about the card.

Q. You do recollect the fact of your suggesting the Merchants' National Bank of Binghamton as a proper person and agent for the receipt of a policy and the collection of a premium? A. I only know from that letter, that is all.

1517 Q. Look at that letter, have you any doubt you suggested that bank as being a proper entity to receive the premium for the company. A. I have no doubt of it.

Q. (Paper handed witness.) I show you another letter, dated 28th of August, addressed to C. Doremus, Esq., and signed H. C. Hermans; do you recollect that as a letter written by you? A. Yes.

The letter last above referred to by the witness was then introduced in evidence. It was marked Exhibit 111.

1518 Q. (Paper handed witness.) I show you Exhibit "A," being the Germania policy on the life of Walton Dwight, and ask you if that policy subsequently came into your hands? A. I received a policy for this amount, and I suppose this is the one.

Q. And when it came into your hands, say whether or not it was included in the envelope

which has been put in on your examination in chief and marked Exhibit "N"? A. I think it was.

Q. Is Exhibit "N" anything more than the ordinary printed form of envelope which insurance companies are in the habit of inclosing policies in?

A. It is a policy pocket.

Q. And the universal custom is, when policies are made out, to enclose them in such a pocket?

A. Not universally.

Q. Well, generally? A. It is quite general.

Q. In this particular case, you mean to have us understand that you kept the envelope and delivered the policy, or that you delivered the policy and envelope? A. I suppose I delivered it in the pocket.

Q. And the words which the learned counsel on the other side emphasized so strongly, "Please notify the company of any change of your address," do you understand to be intended as a notification to you or to the person insured?

1520

Objected to. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

Q. Are you or not familiar with the provisions of law which requires the life insurance company to give notice to the insured a certain period of time before the premium falls due? A. There is such a law in this State.

Q. According to your experience and knowledge derived in the business of broker or agent in life insurance, is it or not the custom to address a notice of this description to the assured under a policy and to print such notice on the back of the paper sent him? A. I think it is the custom to send such notice since that law was passed.

1521

Q. When did that law pass, according to your recollection? A. I don't know exactly, but about two years ago, I think.



Q. Your attention has been called to something to which the attention of the Court was called when I read this policy, and that is that the words "or fifteen" are written in pencil over "ten thousand"; the policy you received was a policy for fifteen thousand dollars, wasn't it? A. It was.

1522 Q. Do you understand that there is any connection between your letter of August 28th, addressed to C. Doremus, Exhibit 111, and the change in the amount of the policy?

Objected to; first, on the ground that it has nothing to do with this special question of agency, and second, that it is incompetent and immaterial what he understands—the facts are in evidence. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

1523

*Direct-examination resumed:*

Q. State whether Mr. Dwight ever came to you to employ you to get life insurance for him?

Objected to, on the ground that the witness is incompetent to state whether or not Mr. Dwight came to him for that purpose. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

1524 A. Not at first.

Q. From whom did you receive your pay for the services in procuring the insurance in question?

Objected to, on the ground that it calls for the conclusion of the witness as to whom he received his pay for his services from, when, according to the correspondence between the witness and the com-

pany, he only applied for a brokerage, which is in fact a reduction of the premium, which might as well be paid to the assured himself as to anybody acting as his agent. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted. 1525

A. The Germania Life Insurance Company ; I received it in a draft or check—from the secretary, I believe.

*Mr. Newton.*—I renew my question as to what was said about those two companies.

*To Mr. Larocque.*—An old policy in the Germania was surrendered and the surrender value of it amounted to a little more than the premium.

Q. Was or was not the amount you received a percentage on the particular premium charged in this particular policy ? A. Yes, it was. 1526

Q. And was it paid as and for a brokerage in connection with that transaction ? A. It was a brokerage or commission, I don't know which you would call it.

Q. What did you call it in your letter in which you introduced the subject to the Germania Life Insurance Company ?

Objected to on the ground that the letter is the best evidence. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted. 1527

*By Mr. Newton :*

Q. State whether at the time you filled in this application to the Germania Life Insurance Com-

pany, Mr. Dwight made any statement to you relative to any policy issued by the Connecticut Mutual, and the policy issued by the Mutual Life of New-York ?

1528.

Objected to as incompetent, on the ground that upon the documentary evidence in the case, and the admissions of the witness on the stand, he was in no sense an agent for the defendants, but was acting in the transaction as the agent or broker of the plaintiff's testator, and that the evidence is immaterial. The additional objection was made that counsel must not indicate the subject to the witness of which he desires him to speak, but must ask more general questions in regard to what he said about other insurance. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

1529.

*The Court.*—The witness will be careful not to suggest in any manner ?

A. Yes.

Q. State what he stated in reference to those policies ?

Same objection, ruling and exception.

A. He stated that a policy had been received in each of those companies.

1530

During the last sickness of Mr. Dwight I saw him ; I watched with him on two occasions ; I was with him two nights and part of one day. I was with him the night of the 14th of November, 1878, and about a week before that. I cannot give the date of the first night. It was about a week before that. I am not certain I saw him at any other time than the two nights I sat up with him, except the last day that he lived. On the first night on

which I sat up with him—I think I went up to the Spaulding House about nine o'clock in the evening, and found Mr. Dwight in bed, and staid with him during the night.

Q. During the first night in question state whether he was in bed all night or not? A. He was. 1531

Q. Do you know whether he was gotten up for any purpose the first night? A. I am not certain but I got him up for a moment.

Q. What did you do for him the first evening, if anything? A. Don't remember doing anything specially, more than to give him what he asked for, sitting by his bed.

Q. Do you remember what you gave? Have you any recollection about that? A. Yes.

Q. What was it? A. That he asked for water.

Q. Anything else that you did for him? A. The first night he slept a portion of the latter part of the night, perhaps an hour or two, during the latter part of the night; there was very little to be done for him during that night. 1532

Q. Do you remember about how often you gave him water? A. I should say half a dozen times.

Q. Go on and state about his condition? A. He didn't sleep until towards morning.

Q. Describe any further what you saw of him that night? A. I saw him in bed when I went there; he remained in bed during the night.

Q. Can you say anything more in regard to the history of that night with him, and if so, state it? A. He did not sleep until nearly morning; and I don't know that I can explain his condition any other way than I have attempted to do. 1533

Q. About how long did he sleep then, at a time? A. He would sleep a short time and rouse up suddenly; he didn't sleep long at a time; I should judge towards morning he slept an hour perhaps.

Q. During the evening or the morning that you were there, did he have any medical attendance?

A. The doctor was in during the evening—Dr. Dan Burr.

1534 Q. Do you know whether any medicine or prescription of any kind was administered to him and if so, what? I ask for what you know? A. I was not in his bedroom at the time. It was after I came there that the doctor came. I have forgotten how long after I arrived, but it was during the time that I was there; that is, probably within half an hour after I came there.

Q. Without stating what he complained of, I would ask you whether during the night he made complaint?

Objected to as incompetent, irrelevant and immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

1535

A. He did.

Q. Mr. Hermans, was Mrs. Dwight there that night any portion of the night? A. Yes; she left, I should say about ten o'clock. When I went there, there was no one in the room but Mrs. Dwight, if I remember.

Q. Upon her retiring, did she state to you where you could find her if wanted during the night?

1536

Objected to as incompetent and as calling for hearsay evidence, and also as immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. She did.

Q. Where did she say you could find her?

Same objection, ruling and exception.

A. She said her room was directly opposite from the door opening from the sitting room into the



hall. I left in the morning after the first night's visit about nine o'clock; I think I staid to breakfast. Mrs. Dwight was there when I left.

Q. Describe to the jury now how Mr. Dwight looked, in your own way—how he appeared that night? A. His appearance was somewhat haggard, and I noticed the expression of his eye—his eyes looked as though he had slept but very little, he was somewhat thinner in flesh than when I saw him before, and changed in appearance. In giving him water I gave it from a goblet or glass. He was propped up in bed; his head was elevated considerably all the time so far as I observed. 1537

Q. And in giving him water did you raise him any further than his then situation, or did he raise himself; state how that was? A. I can't be certain whether I raised him up to drink or not.

Q. Do you know whether he ate anything that night? A. My recollection is, that I gave him that night a raw oyster; he told me where there were some. 1538

Q. State whether he ate that oyster? A. He ate one, and very soon threw it up.

Q. Did he eat anything else that night? A. I think I gave him a Malaga grape, and perhaps two; I can't remember whether he retained that or not.

Q. In his appearance to you as you watched with him, state whether he appeared to be sick or not?

Objected to as incompetent, and also on the ground that the witness is not shown to be competent to express an opinion. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted. 1539

A. He did.

Q. Pass to the next night—the 14th—about what time in the night did you reach him? A. My re-

collection is, it was between nine and ten o'clock; I can't give the precise time. Mrs. Dwight and Dr. Dan Burr were there when I went there; whether he was there when I got there, or came in afterwards, I don't remember. Mr. Dwight, when I went there that night was in bed; he remained in  
 1540 bed that night, all night, unless for a moment I got him up; I can't recollect now whether he did or did not eat anything that night. About midnight I had him up; I gave him a bath and stimulant of some kind, bay rum or brandy, I don't know which. I bathed him all over and rubbed him.

Q. Can you give any idea how long you were engaged in that? A. I couldn't state exactly; probably from ten to fifteen minutes; I rubbed him briskly with a towel; while rubbing him he complained of soreness across his stomach. That  
 1541 night he appeared to be weak; he complained.

Q. How did he show his weakness? A. He showed it in his looks; he slept very little that night, if any.

Q. Did you have conversation with him during the night? A. Yes; I should say his voice was not as strong as it was the night before I was with him, as compared with his usual voice it was not as vigorous. In the morning I left something after nine o'clock, I think it was; I left for a little while; I left there Mrs. Dwight and Mrs. Owen; no, I think, however, that when I left in the morning that Mrs. Dwight was the only one in the  
 1542 room.

Q. That night had you any conversation with Mrs. Dwight upon her leaving relative to where she could be found? A. I had. She told me where her room was; it was opposite the door opening into the hall from the front door. I saw Mr. Dwight again that day. He had asked me to come back.

Q. For what ? Did he say ?

Objected to as incompetent and immaterial.

*The Court.*—It is not necessary to state what he said. 1543

Q. Under an appointment with him that day did you come again ?

Same objection; the Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. I did, and found him in bed on my return that day ; it was about eleven o'clock in the daytime ; I should say that I was with him from half to three-quarters of an hour ; I bathed him in stimulant, all over thoroughly ; I bathed him and after bathing him and rubbing him thoroughly, I assisted him to dress partly, and helped him out from the bedroom into the front room or parlor ; he was in the bed when I bathed him, and got out by my taking hold of him and helping him. 1544

Q. Could he walk alone apparently ?

Objected to on the ground that the witness is not shown to be competent to give an opinion on the subject. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted. 1545

A. He walked 'by leaning on me ; he walked slowly and evidently with effort ; I assisted him out into the front room and into an easy chair or sick chair that was there, one that tipped back, and then I went and called the Spaulding House barber ; I placed him in a chair by assisting him to sit down ; he walked out with my assistance ; I as-

sisted him into a chair ; he had on two shirts and his drawers ; I am not certain whether he had on pants or not ; I noticed his whiskers ; they were a little longer than usual ; after that I saw his body.

Q. State what had been done to his whiskers ?

1546 A. I noticed the beard seemed to be a little shorter ; the beard after his death, as I saw him, was about as he usually wore it, as I remember ; I did not notice whether his hair had been cut or not ; the barber I brought was named Hausman ; he was a white man ; he had a shop in the Spaulding House ; in the rear of the Spaulding House.

Q. As I observed from one of these letters, you came up from New-York with Mr. Dwight ; I ask you whether you saw him in New-York ? A. Yes ; I know where in New-York the Germania Life Insurance office is ; I saw Walton Dwight there in the latter part of August, 1878, between the sending of this application and the receiving of this policy ; I know Mr. Doremus, the secretary, and saw him there that day ; Mr. Dwight was present, and also the medical examiner of the company ; their home examiner ; Mr. Dwight was examined there by the home examiner of the company ; I was present at that examination ; I could not from the dates of these various applications that have been put in evidence, passing through my hands, state at what time they were signed ; I could not tell from their dates at what time the applications passed out of my hands.

Q. About what length of time were you engaged in filling the applications completed by you.

1548

Objected to on the ground that the question is a compound question, and incompetent, and that he should be interrogated about each application, if he is to give evidence upon the subject at all. The Court overruled the objection,

to which ruling the counsel for the defendants duly excepted.

A. I should say from the time I wrote the first application until I wrote the last, it was two weeks or over; Mr. Dwight was present with me quite a good deal of the time. 1549

*Re-cross-examination by Mr. Larocque :*

Q. You have stated that on the first evening you sat up with Col. Dwight you administered an oyster; may I ask if that was under the physician's directions when he left, or Mr. Dwight's direction? A. Mr. Dwight's request.

Q. The doctor had not charged you to administer the oyster? A. I have no recollection of it.

Q. Did you repeat that experiment on the second night? A. I don't remember that I did. 1550

Q. With the exception of one oyster and the Malaga grape, can you now recall anything that you administered to the patient on either of these occasions? A. I have no recollection of giving anything but what I have mentioned.

Q. What was the first application for life insurance on the life of Walton Dwight with which you had anything to do in any capacity, in the summer of 1878? A. My recollection is that it was my company, to the Phenix Life Insurance Company.

Q. That was dated the 15th of August, wasn't it? A. I don't remember now. 1551

Q. I understood you to say on your examination in chief that as to the first application, you went to Mr. Dwight about it? Is that Phoenix application the one you went to Mr. Dwight about? A. If that was the first one I did.

Q. Now, after you had made out an application to your own company for him, didn't he come to



you and propose to you to make application to various other companies for him, for insurance amounting in the aggregate in the neighborhood of one hundred thousand dollars? A. No, I don't think he did.

1552 Q. Haven't you so stated to me, and didn't you so state to me in the town of Norwich, at the May Term of Court, when you were attending there as a witness? A. I have no recollection of it.

Q. Did you, in point of fact, make applications to various companies for Dwight after the application in the Phoenix Mutual? A. I did.

Q. Did you make these applications of which you have spoken, at Mr. Dwight's request? A. Partly.

1553 Q. (Paper handed witness.) I show you Exhibit No. 38, application to the Brooklyn Life Insurance Company, to which the name H. C. Hermans is signed as witness—is that one of the applications you presented at Mr. Dwight's request? A. I wrote that application.

Q. Did you present it at Mr. Dwight's request? That is your signature as witness? A. Yes.

Q. (Paper handed witness.) Look at Exhibit No. 20, application to the Globe Life Insurance Company, and see if the signature, H. C. Hermans, is your signature to that application as witness? A. Is this the original?

Q. I so understand. A. I should say it was my signature.

1554 Q. (Paper handed witness.) I show you Exhibit No. 39, being an application to the Homœopathic Mutual Insurance Company, and ask you if the signature, H. C. Hermans, as witness to that application is in your handwriting? A. It is.

Q. (Paper handed witness.) I show you Exhibit No. 17, to the John Hancock Mutual Life Insurance Company, and ask you if the signature, H. C. Hermans, witness, to that application, is in your handwriting? A. I should say it was.

Q. (Paper handed witness.) I show you application, Exhibit 26, being the application to the Home Life Insurance Company, and ask if that is your signature? A. That is my signature.

Q. (Paper handed witness.) I show you Exhibit No. 43, being the application to the Knickerbocker Life Insurance Company, and ask if that is your signature as a witness to that application? A. It is. 1555

Q. (Paper handed witness.) I show you Exhibit No. 37, being the application to the National Life Insurance Company of the United States of America, and ask you if you witnessed that application? A. I did.

Q. (Paper handed witness.) I show you Exhibit No. 46, the application to the Union Central Life Insurance Company, located at Cincinnati, Ohio, and ask if that is your signature? A. It is.

*To Mr. Newton :*

1556

I have no means of knowing at what time the John Hancock application left my hands ; I have no means of knowing on what precise date Walton Dwight signed the application to the John Hancock Company.

Q. Is that true of all these other applications that have been shown you ?

Objected to as incompetent, irrelevant and immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted. 1557

A. I have not.

Q. And are all those applications filled in in your handwriting, so far as Dwight's statement is concerned? A. They are all, so far as I remember.

Q. You spoke of being in New-York at the time Mr. Dwight was down there ; did you, at a later

day and before his death, see Mr. Doremus? A. I did.

Q. And at that time did you have a conversation with Mr. Doremus; when was it? A. It was some time in October, 1878.

1558 Q. What conversation had you with him relative to this policy, if any?

Objected to as incompetent, irrelevant and immaterial, and also on the ground that the question calls for hearsay evidence. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. I asked him in regard to renewals that were coming due, or the renewal, and asked what I should do, and he told me to collect the premium and deduct my commission and send the balance.

1559

The counsel for the defendants moved to strike that evidence out as incompetent and immaterial; that the declarations of Mr. Doremus were not declarations made in the course of business relating in any way to the validity of this policy and not a part of the *res gestae*; that the declarations of Mr. Hermans are liable to the same objection, and moved in regard to each, what Mr. Doremus and what Mr. Hermans said, separately, to strike them out for these reasons.

1560

*The Court.*—I assume that the offer is on the question of agency?

*Mr. Newton.*—Yes, sir.

*The Court.*—I will allow it to stand.

The counsel for the defendants excepted.

(Application to the Globe Insurance Company, Exhibit No. 20, shown witness.) That signature is not as I usually write it; I usually connect the "h" and "e"; I should think it was mine, though, but I can't say positive.

*Re-cross examination by Mr. Larocque :*

1561

Q. (Paper handed witness.) Is the filling up of the body of this Exhibit No. 46 (application to Union Central) in your handwriting? A. The filling in of the application proper down to *there* (indicating) is my writing.

Q. That is in the application proper, which is signed Walton Dwight, and which is under the heading (Subdivision "part 1")? A. Yes, sir.

Q. (Paper handed witness.) I show you Exhibit 38; look at the body of that and say whether the filling up there is in your handwriting? A. It is.

1562

Q. (Paper handed witness.) I show you Exhibit 37, and ask you the same question, is the filling up in your handwriting? A. It is.

Q. (Paper handed witness.) And No. 43, application to the Knickerbocker, is the filling up of that in your handwriting? A. It is.

Q. (Paper handed witness.) How is it about the filling up of this, No. 26, the Home application? A. That is my writing.

Q. (Paper handed witness.) How is it about this, Exhibit 39, the Homeopathic? A. That page, the filling up of the page of questions and answers constituting the application, is in my handwriting.

1563

Q. (Paper handed witness.) I show you Exhibit No. 17, application to the John Hancock Insurance Company, is that filled up in your handwriting? A. Some of it looks like my handwriting, and some of it doesn't.

Q. What part do you think looks like your handwriting? A. That is my writing there. (Indicating the words "New-York Life, \$10,000.")

Q. Do you recognize anything else on the face of that application as being in your handwriting, with the exception of what you have stated? A. The "Connecticut Mutual, \$15,000" there is in my handwriting.

1564 Q. Is there anything else there which you can recognize as being in your handwriting? A. I don't think the balance is in my handwriting.

Q. You don't think there is anything else in your handwriting? A. The signature does not look like my signature, and there was one other exhibit, the application to the Globe, I was in doubt about it; it does not seem to be in my writing.

Q. Do you know whether or not that is in your handwriting? A. I never sign in that way and I don't think it is.

Q. Do you know? A. I should say not.

Q. Do you know whose it is? A. I do not.

1565 Q. Do you know in whose handwriting any part of that paper you fail to identify as yours is? A. I do not.

Q. Do you know your own handwriting? A. I suppose I do.

Q. Will you swear that the whole of that filling up is not in your handwriting? A. I should say it was not.

Q. You will swear it is not? A. Yes.

Q. As to the signature, now how positive are you about that? A. I am positive that it is not.

Q. Didn't you forward this application to the John Hancock Company? A. I think I did.

1566 Q. And you don't know in whose handwriting the residue of the paper is, of which you identify some parts as your own, and the management of which you had? A. I don't know.

Q. You don't know? A. I don't know positively, no.

Q. You say you don't know positively; do you know at all? A. I had a clerk that assisted me some at that time.



Q. Did he sign your name without prefix or affix?  
A. That I can't say.

Q. (Paper handed witness.) I show you now Exhibit No. 19, application to the Phenix Life Insurance Company, and ask you in whose writing the filling up of that application is? A. It is mine, with the exception of this paragraph (indicating) 1567  
"Commencing last Spring."

Q. Whose is that? A. I don't know.

Q. Do you know? A. It is written with a finer pen, and the more I look at it the more I think perhaps I wrote it.

Q. Are you able to say whether or not you wrote that paragraph yourself? A. I should be inclined to think I did.

Q. Are you sure? A. Let me look at it again. (Application referred to).

Q. Are you able to say now whether you wrote it or not? A. I should say it was my writing with a finer pen. 1568

Q. Will you swear to it whether it is yours or not? A. I should swear—I should say it was, now.

FREDERICK HYDE, called as a witness on behalf of the plaintiffs and sworn, testified as follows:

*Examined by Mr. Smith:*

I reside in Cortland, New-York; have been a practising physician there since 1836; I am seventy-three years of age; I don't know that I ever saw Walton Dwight alive; I saw a body that was said to be the dead body of Walton Dwight, in Binghamton—at the Spaulding House, I think, at Binghamton, in November, 1878; I remember Dr. Delafield was there, and also Dr. George Burr, Dr. Dan Burr, Dr. Orton, Dr. Chittenden and Dr. Richards; Dr. Swinburne was present; the body, when I first 1569

saw it, was in a room in connection with that building; I couldn't say exactly in reference to the other apartments of the building; it was said to be in that building; the body was lying upon a table—a platform—upon its back; it was there in that particular spot that the examination of this body was made.

1570

Q. During the examination that you have just mentioned, about how many persons do you think were present, so as to witness the appearance of the body? A. Well, I should think it would average in the range of thirty; I didn't count them, but that is my recollection; the clothing of the body was removed; there was a full, unobstructed opportunity to all to view the outside appearance of this body; when I reached the place designated for the autopsy, the body was there in the room; I saw the ice box; I understood that that body had been in that ice box before it was brought to the table; it was a symmetrically made body—a well made body.

1571

Q. Was there anything you saw that was out of the order of nature, as it seemed, of the man, in the nature of wounds, scars or fractures? A. No, sir; not any.

Q. How as to color and expression; describe it as near as you can by words? A. Nothing out of the ordinary appearance of a dead body?

Q. Was there this general examination first of the outside of the body. A. I don't quite get that.

Q. Before we proceed further, was there this general opportunity to look and view the outside of the body? A. Yes, it was examined externally.

1572

Q. Was the body moved or turned so as to afford an opportunity to see all the outside of it? A. It was. This having been completed, the next step was the commencement of the examination of the body and the commencement of the autopsy. It was an examination by cutting it up with knives; the first cutting was on the head, the soft coverings

over the bones of the head were divided first—the scalp was divided and turned back—that exposed his skull underneath. The skull was divided and sawn through above the ears and the upper part turned off; that exposed the outer covering of the brain, the covering between the bone and the underlying brain.

1573

Q. Was there anything that you witnessed that you can name here in the appearance of this outside brain after it was uncovered by removing the skull? A. I don't remember anything out of the common look of an autopsy. The coverings of the brain were divided so to expose to the view of the eye the substance of the brain.

Q. Was there anything discovered in that? A. Nothing out of the ordinary showing of a post-mortem; the brain was examined underneath—the base of the brain—it was taken out and examined.

Q. Was anything discovered there that attracted attention? A. I don't remember anything out of—

1574

Q. You will understand I ask for what you know, and not what others know. Was there anything that you discovered there on that examination, which you have now last described, of this brain, that was unnatural or out of the ordinary course? A. No.

Q. Was that substantially the extent of the examination of the brain? A. All the parts, I think, I have mentioned were divided and inspected from top to bottom. We next examined the thorax—the chest—I mean the part of the body made up of ribs and backbone outside, and lungs and heart and blood vessels inside—that includes the wind-pipe. Incisions were made and the ribs divided at their junction where they unite with the breast-bone, and taken away, and that exposed the contents within. I mean they took a knife and cut the chest open and threw the parts back—ran a scalpel along down between the breast bone where the

1575

gristle is, separated it and opened the whole thing. The vitals were exposed to general view, the lungs, the larynx and trachea were examined. The larynx is the upper part of the windpipe; the trachea is the windpipe.

Q. Were both the lungs opened so you could see  
1576 the inside as well as the outside? A. Yes, sections were made, cut into and all parts exposed in that way.

Q. State to what extent, so far as you can describe in words, what other operations were performed so as to bring under the observation of those that were there the inside of the lungs of this man? A. Cut into pieces with a knife and taken hold of and examined.

Q. And opened? Yes.

Q. I want to know from you whether there was inside of those lungs any such thing as a cicatrix?  
A. I saw none.

1577 Q. Don't you know whether they were there or not when you had the thing right before you? A. Yes, I think so.

Q. Were there any there? A. I say no, I didn't see any.

Q. Now, directing your attention particularly to the interior—the inside—of the lungs, were there any such things there as are known by the ordinary medical term “nodules”? A. I didn't see any such things on the interior of the lungs.

Q. Did you see any such things on the outside or the outside membrane of the lungs?”  
1578 A. At the upper part of the right lung there was a little, slight projection—possibly two or three; I wouldn't be certain about that—little projections, kernels or whatever you please to call them; they were nodular in shape; I only remember two that seemed to be separated, but very near together.

Q. Putting all the parts together side by side, all that you saw, bringing all the parts affected by this nodular characteristic, together, with a view of

conveying an idea of size, can you give any idea of any known thing which will enable us to get at the size ; how large they would be if they had been all put side by side—the entire two or three parts that were in any wise involved, so far as you could see or feel or know by the senses—how large would they be if brought together? A. I shouldn't think they would amount to more than the tip end of my finger. It was a projection that stood up. 1579

Q. Putting them side by side, how large? A. One-eighth to a quarter of an inch elevated above the surrounding lung.

Q. Will you state whether there was any further or other investigation of the condition of the lung that you can describe here? A. I don't remember that there was anything more.

Q. Will you state whether you had any other opportunities than mere sight to enable you to know the condition, character, texture or other condition of these lungs? A. Yes, I had the opportunity of feeling to any extent I chose ; that was the fact as to the others who were there, as far as I remember. 1580

Q. So far as the appearance of cicatrix is concerned, I want to know whether you discovered them at all? A. No, not any, outside or inside—nowhere. The next step in the examination was the examination of the heart, I think, and as we continued on, the stomach, liver, gut, kidney, all that belonged to that cavity.

Q. I don't mean to go through the detail, but was every one and part of these organs below the chest, so far as you recollect now, examined to the extent that anybody desired? A. I think so. 1581

Q. Will you be kind enough to state whether in that examination anything peculiar or out of the ordinary course of things was discovered. I am speaking now of the part below the breast?

*Mr. Russell.*—I object, on the ground that the



witness should not state a comparison and unusual appearances in a general way, but should indicate what he did see.

1582 *The Court.*—Do I understand that there is any dispute between the physicians as to what was discovered below the breast in the intestines?

*Mr. Russell.*—I am not certain.

*The Court.*—They all agree I think.

*Mr. Russell.*—Your Honor will remember that this is the first doctor that has been put upon the stand and we don't know how far they are going to undertake to deny the characteristics stated by our medical witnesses.

*The Court.*—The way the question is put it is in entire harmony with what you say as to what was discovered below ; I think I will limit it if it goes beyond it.

1583 Objection overruled, and the counsel for the defendants excepted.

Q. Was there discovered, so far as you know anything in the condition of any of these organs—I now confine it below the disputed territory—to your knowledge that was unnatural or unusual?

Same objection, ruling and exception.

1584 A. The stomach showed there had been slight inflammation in its lining membrane. And the bowels or intestinal canal below, there were points that showed—especially in the smaller portion of the gut, there were some signs of chronic inflammation there, but at no point was there ulceration or disintegrations which had changed materially the common look of the inside of the intestines, and the parts around it—of the bowel. Attention was called to the outside appearance of the neck of this dead man.

Q. Before it was interfered with by the knife or otherwise, was it under conversation and discussion and looked at? A. Yes, looked at.

Q. In the first place, in your own way, I wish you would describe what you saw of the outside appearance of that dead man's neck, as he lay there before you began to cut him up? A. I saw nothing unusual. 1585

Q. Are you able to say whether there was anything there or not? A. I saw nothing there.

Q. Are you able to go further and say whether there was or not? A. There was not.

Q. Do you know, as you sit there, whether there was or not? A. I do.

Q. Was there any indentation or groove across or around the neck of that body? A. There was not.

Q. Was there any depression having a perceptible convex or half round back side to it? A. Not any that I saw. 1586

Q. Was there any spot there having a feeling or appearance of the skin on the back side of it differing in any wise from the color or character of the surrounding parts? A. No.

Q. State, if you please, what was done in the process of cutting that man's throat? A. It was laid open, cut open by cutting down through there (illustrating) and making a wound large enough to take out the breath pipe and tongue. The knife was stuck in just under the chin and carried down through the throat.

Q. What effect had that upon bringing into view the windpipe? A. It exposed it nicely; I saw that cutting done. 1587

Q. Was there any mark or wrinkle or groove, or any other unevenness of the surface from the end of that man's chin down through his breast where they cut? A. No, not any; not a thing; that cut exposed to view his windpipe.

Q. I want to know from you whether there was

any indentation or depression, or pressing back of any of those parts of that windpipe? A. No, not any; no compression whatever.

Q. Now, if there were on the sides here any unevenness in the exterior surface ascending at an angle of forty-five degrees, or any other angle, just describe what that was? A. All I saw was a little fold in the skin and flesh.

Q. What do you mean by a "wrinkle"? A. A fold in the skin. I mean simply a little folding in the skin that would leave one portion of the skin a little lower and the other a little higher; like turning a man's neck so (indicating); I see them in yours.

Q. But how does that serve to convey the idea to the jury the condition of the appearance of the man's neck, if that was it? A. Nothing but what would be natural.

Q. And the skin in this condition you have described here? A. Yes, folding of the skin.

Q. Did everybody cut what he was a mind to, so far as you know? A. Yes.

Q. Something has been said here about "bloody mucus," are you able to state what you saw of any such substance as that about the body of this man? A. I didn't see any.

Q. What was done with what was left of this man when you got through cutting? A. Some of the portions were kept and put into a bottle that each brought along, and the balance was returned into the body.

Q. Are you able to state about how many vessels and jars were carried off with portions of his body? A. I don't think I could say just the number; I saw several; I saw the portions go in; what was left was returned to the body, into the openings where they had been taken from. I do not remember whether the funeral service was held after that; I do not know whether the body was buried or not. I was down there afterwards when the

grave was opened and this man's body taken out ; I saw that gathering there ; there was some more cutting done.

Q. Other portions of the body carried away ? A. They were said to be carried away ; I didn't see them go, but they were taken to be carried away.

1591

*Cross-examination by Mr. Russell :*

Q. At whose invitation did you attend on the 18th of November, or were you a volunteer ? A. I went there on a dispatch sent by Dr. T. G. Orton, which I received on Sunday evening. I went down Monday in the night, because there was no train earlier.

Q. At what hour of the day did you attend at first where you saw the body of Walton Dwight ? A. I couldn't say exactly what hour, but in the morning. When I first saw it the body was in the apartment or room I understood belonged to the Spaulding House. The body was on the board when I first saw it ; I never saw the body when it was in the cooler.

1592

Q. When it was on the board, in what position was the head ? A. In a natural position.

Q. You have stated that upon external and internal examination you discovered nothing wrong or unnatural in the body or organs, is that true ? A. Beyond what was post-mortem.

Q. Did you discover anything wrong or unusual in the external appearance of the body or the internal condition of the organs ? A. No, excepting what I have described ; I mean what I had spoken of in the stomach or bowels.

1593

Q. Was there anything in the stomach or bowels that indicated to your professional mind the cause of death ? A. No.

Q. Then, sir, you will inform us and the jury that with all your professional skill and your experience as a medical man since 1836, upon the

post-mortem examination of the body of Walton Dwight, conducted, as you say, sufficiently, and you discovered nothing to indicate to your mind, as a medical man, the cause of that man's death?

A. No.

Q. You did not? A. No.

1594 Q. You have spoken of the condition of the stomach as simply indicating a slight inflammation?  
A. A chronic inflammation.

Q. Were there notes kept of this autopsy? A. There were.

Q. By whom? A. By Dr. Dan Burr; he did the writing; I made no suggestion as to what should go in those notes.

Q. Did you make any dissent as to what should go in those notes? A. No.

Q. Did you hear the notes read over after they were finished? A. Yes.

1595 Q. Did you express your satisfaction with them?  
A. I did.

Q. And that satisfaction remains now, does it?  
A. Yes.

Q. So that there is nothing that is contained in those notes of that autopsy to which you then dissented or now dissent? A. No, not that I heard read there.

Q. Did you feel any portion of the body? A. I did; I felt of the neck externally, and of various tissues or parts that were exposed as the dissection went on.

1596 Q. State the precise organs of the body which you felt. A. Of portions of the lung, the pulmonary structure of the lungs, substance and membranous portions, and the bronchial portions, and the substance of the lungs.

Q. Can you name any particular portions on the lungs as the portions of which you felt? A. I put my finger on the lung substance.

Q. Of which lung? A. The right lung.

Q. Any other part? A. I think so.



Q. When you say you think so, do you remember it? A. I am sure I felt of other parts.

Q. Do you remember of feeling of other parts? A. Yes.

Q. What part? A. Lower down, down as the bronchi goes down in the lung substance.

Q. Did you feel of the lung internally? A. I 1597 have spoken of that particularly.

Q. Do you remember of putting your fingers on more than two or three portions of the lungs? A. I should say I did; I went from one part to another, along.

Q. The feeling of which you describe was simply to run your finger along from one portion to the other? A. I mean going along and taking hold.

Q. How many parts of the lung substance did you pinch? A. I can't remember exactly, but I remember I did do it to some part of the lungs.

Q. Was your attention called to anything being said as to whether there were cicatrices in the lungs? A. No, nothing said about a cicatrix, not 1598 in the interior of the lung.

Q. I ask if your attention was called to the cicatrix by anybody on that post-mortem, or whether you did not hear anything said about it? A. I remember hearing some gentlemen say that probably this nodule had connection with some cicatrix; that is all I remember about that.

Q. Was that all that was said that you heard? A. I think so.

Q. After that was said, did you make any further examination of the lung substance? A. I ex- 1599 amined these nodules.

Q. Did you make any further examination of the nodule? A. I am not certain whether it was completed or not.

Q. Isn't it a fact that the word cicatrix was originally written in the notes as a mark upon the lung substance? A. I don't remember it so.

Q. Will you say here, under oath, it was not?  
A. That is my remembrance of it.

Q. Will you say it was not? A. I remember, I think, as well as I remember anything, it was not.

Q. I didn't ask that, but give me your recollection whether it is positive? A. That is the best of my recollection.

Q. I want to know whether you will tell this jury that the word "cicatrix" was not originally written in the notes of that autopsy as an appearance upon the lung substance? A. I think I have spoken—I said all there was upon that subject was in connection with the nodule, probably a cicatrix. As I say, to the best of my recollection it did not go into the notes; my positive recollection is, it did not go into the notes.

Q. Do you remember whether the word "cicatrix" was put in there, and Dr. Burr afterwards erased the word "cicatrix" and put in the words, "a few fibrous nodules"? A. I remember, as I said, this was spoken about, and the gentleman who spoke of it suggested it should be changed, and it was; that is as I recollect it, and as I have testified.

Q. That what should be changed? A. This talk—it was simply said, this was the phrase, "probably a cicatrix in connection with some former disease," and then after a little while the conclusion was to leave it out.

Q. Did it go in, "probably a cicatrix"? A. Not to my remembrance—it did not.

Q. Then you say this talk was before the writing of anything in reference to it? (Paper handed witness.) Let me show you this paper, and you examine it all you please, so as to be certain whether you recognize it as the notes, and tell me whether your recollection is incorrect upon the subject of which we have been speaking? A. It is as I stated, "probably." I don't know of anything I want to add to that answer; as I said before, the operator

suggested as a probability, and afterwards, as I recollect, it was corrected.

Q. Haven't you told us, within the last five minutes, that your positive recollection was, that the word "cicatrix" was not written in the notes? A. Yes; not in the record.

Q. And you say so still? A. That is my recollection. 1603

Q. Look at the word that the line is drawn through and read it aloud for the information of the jury; what is the word the line is drawn through? A. Upper lobe—

Q. The word that the line is drawn through? A. It is "scar or cicatrix."

Q. The word "cicatrix" is there, is it, with a line drawn through? A. As I stated before, "probably cicatrix so and so."

Q. The word "cicatrix" was written there and a line drawn through it, you see now by the notes? A. I remember the expression of the gentleman who made it in that way. 1604

Q. Is the word there canceled by a line drawn through it? A. Yes.

Q. Then, when you told me a few minutes ago that you had a positive recollection that the word "cicatrix" was not written in the notes and then erased, you find by the notes that you were mistaken, do you not? A. I don't know that I can correctly answer.

Q. I ask if you don't find that you were mistaken? A. I referred to the corrected notes as we finally signed. There were several suggestions here as to other things. 1605

Q. I ask you, as an intelligent man, knowing the meaning of plain, common English, whether you were not mistaken when you swore a few minutes ago that you had a positive recollection that the word "cicatrix" was not in those notes? A. The word cicatrix, I think I have said, was spoken of; I mean to say so certainly.

Q. Were you not mistaken when you swore the word was not in the notes? A. I had in my mind the notes as corrected when I testified. I remember this conversation—I understood the notes were corrected.

1606 Q. Do you understand the difference between talk and notes? A. Perhaps so.

Q. Do you understand what the notes of the autopsy were? A. A record of what was seen.

Q. Do you understand what that paper was I showed you? A. A record of the autopsy, as I took it to be.

Q. Did you understand me when I asked whether the word “cicatrix” was not first written in the notes? A. As I say, this was discussed.

*The Court.*—Answer the question.

*Witness.*—Yes, it was written in as I say.

1607 Q. Did you understand me when I asked you that question? A. Yes.

Q. Did you understand your own answer when you said that you positively remembered that the word cicatrix was never written in the notes? A. In the corrected notes.

Q. Did you understand your answer when you were answering? A. I certainly did not mean to exclude this conversation held here.

Q. I am not talking about any talk at all. I am talking about the notes. Did you understand your own answer when you said that word was not in the notes and never was in the notes? A. I had

1608 reference to the corrected notes.

Q. (Question repeated.) Did you understand your answer? A. Yes.

Q. Did you understand me to ask you whether the word cicatrix was not originally written in the notes and then erased and another word substituted, did you understand me when I asked you that question? A. I don't remember its being anything more than referred to; it was as I stated. This

conversation came up, and was discussed and it was written down in this way and then corrected as I have testified.

Q. Do you consider that a fair answer to the question I asked you as to whether you understood my question or not? A. I think so.

Q. You think so? A. Yes.

1609

Q. That is the best answer you can give? A. That is as I remember the case.

Q. Wasn't the word "cicatrix" written in those notes by Dr. Dan S. Burr and then afterwards did he not erase those words and write other words in their stead? A. It was written in and read in this way with the cicatrix in, and then on a further discussion of the case it was as I understand it, left out.

Q. I ask for the simple fact, whether the word was not written in and then erased, and then another word written in? A. I think I just stated that; I meant to state it before.

1610

Q. Can you give me the name of one single doctor who said, "strike out the word cicatrix, and put the other words in"? A. My recollection is that Dr. Burr suggested it at the time.

Q. Which Dr. Burr? A. Dr. Dan Burr; but I cannot be positive on that.

Q. Have you any recollection that Dr. Dan Burr suggested it? A. I am not sure; he was in the conversation over it.

Q. Have you any recollection that Dr. Dan Burr suggested it? A. I can't say who suggested it first.

1611

Q. Have you any recollection what single doctor suggested it? A. I know the question came up and was discussed.

Q. I want to get at the name of the doctor himself who suggested it; if you can remember any such man, in order that I may ask him if he suggested it? A. I don't know that I could name the



man who made the suggestion, and know if it was——

Q. You don't know that you can name the man who suggested it? A. I wouldn't be certain.

1612 Q. Can you remember the words that were used by any doctor, who is nameless; can you remember the words used by any doctor, whose name you can't remember, who suggested changing? A. I don't know as I can say between these gentlemen who were talking about it, all of them?

Q. Can you give any words used? A. Only on this.

Q. I ask if you can give them? A. I don't remember the exact words.

Q. You say you assented to the notes? A. Yes.

1613 Q. Do you say that there were only two of those nodules in the lungs? A. There were two that I remember distinctly, and beyond that I don't know.

Q. Is it your knowledge of that post-mortem examination—— does that extend so far that you can tell the jury how many there were? A. I am certain that there were two distinct ones, myself, that I felt of. I only remember of taking hold of two, as I stated.

Q. Does your recollection serve you now, so that you can tell how many there were? A. Two.

Q. Will you swear there were only two? A. That is all I remember about, and I can only swear to two.

1614 Q. Will you swear there were only two. A. No, I would not swear to that. I swear I saw two and took hold of them.

Q. I want to ascertain from you whether you made a sufficient examination yourself so as to be able to tell the number of those nodules? A. I said I was certain there were two, and beyond that I was not certain.

Q. Did you make examination enough to know

how many there were? A. Only two that I remember about.

Q. Did you make examination of those lungs enough to satisfy your own mind and your own conscience how many there were of those nodules in and on those lungs? A. There were two that I saw.

1615

*The Court.*—Say yes or no to that question.

Q. (Question repeated.) Answer the question. A. Well, I don't remember of seeing only the two, as I told you.

Q. (Question repeated.) Answer the question. A. Well, I say I am positive there was two, and beyond that I am not.

Q. (Question repeated.) Answer the question. A. Well, it is possible there might have been more, but I say I didn't see them.

Q. Did you make examination enough to satisfy your own mind how many there were? A. Yes; I did.

1616

Q. You have said there might have been more? A. Yes.

Q. What do you mean by that? A. I mean by that there might have been a nodule or two I did not—

Q. Observe? A. That I did not observe.

Q. In the notes which you signed did you say that there were several small fibrous nodules? A. I think that was in the reading of the notes.

Q. When you signed it? A. No; I am not certain it was.

Q. Do you think the notes have been changed after you signed them? A. Not that I know of.

1617

Q. Then if those words were in the notes they were there when you signed it? A. Quite likely; I don't know how it could be otherwise.

Q. Well, I ask you, read those words "several small fibrous nodules"? A. Yes; I remember that.

Q. Were those words in those notes when you signed those notes? A. Yes; I think so.

Q. What do you mean by "several"; do you mean two? A. Yes; and possibly more, but I only saw the two myself.

1618 Q. You didn't mean to confine it to two when you signed the notes? A. Only to what I had seen.

Q. Did you mean two by "several" when you signed the notes? A. Yes; I mean two.

Q. Did you say in the notes you signed, that these nodules were probably the result of old pulmonary phthisis? A. That was written in, to my recollection, I think.

Q. To your knowledge? A. Yes.

Q. Was that your judgment then? A. That they were written in.

1619 Q. Was it your judgment that these fibrous nodules were probably the result of old pulmonary phthisis? A. It was not my own opinion, sir.

Q. What did you sign the notes for then, and not object to them? A. I said this at the time, but I was willing to sign the notes if the others were, and I state here that my own opinion was—I state that while others might look at in that way, my own opinion was otherwise.

1620 Q. Then you deliberately signed notes and assented to them, which did not express your own judgment upon this case, is that true? A. My own private opinion would be as I have said, that they were not scars, and I say so now. Perhaps I do not understand your last question.

Q. (Question repeated.) A. That was my own private opinion that they were not the result, as was stated there.

*The Court.*—That is not an answer to the question. The question is, whether you at that time signed notes which did not express the truth of

the autopsy as you understood it? A. Yes, sir; not my opinion.

Q. Is your answer "Yes"? A. Yes.

Q. Did you not, in answer to my interrogatory a short time ago, tell me that these notes expressed your own individual judgment upon this case? A. Well, in that I was willing to go—I signed the paper with the others, if there was no objection. 1621

Q. (Question repeated.) A. Yes; I said so.

Q. Why do you now tell me that in this respect it did not express your opinion? A. Well; for the reason I have already stated, there was a question about it. While others believed there might be something about that, I did not, and yet I say, I was willing to indorse the paper with the rest of them; there is no question about it.

Q. Is there any other respect in which these notes are inaccurate according to your recollection?

A. I don't know about that; the post-mortem I remember of reading at the time, or it was read in my hearing. 1622

Q. (Paper handed witness.) I present these notes to the witness, and ask him to read them on the stand, and say whether in any other respect they are inaccurate according to his recollection? A. (After reading). No.

Q. How many doctors were there that took part in this autopsy according to your recollection? A. There were several; I don't think I could tell the exact number without the time to recall their names.

Q. Do you use the term "several" to mean two, as you did in the notes? A. There were some ten or fifteen doctors there. 1623

Q. Was there a single other doctor that expressed any dissent at that time and place in any manner, shape or form, as to the correctness of the statement that these nodules were probably the result of old pulmonary phthisis? A. That was discussed by myself and one or two others, certainly.

Q. (Question repeated.) A. I don't remember any positive objection to that.

Q. You have stated that these nodules were about the size of your index finger, and about an eighth of an inch above the surface of the lung?

A. Yes, that is, standing up, projecting.

1624 Q. Do you know how far down in the substance of the lung they went? A. I couldn't say; I took particular pains to feel around the base of these projections, and I detected nothing but the normal feel of the covering of the lung.

Q. I ask you if you know how far down in the lung substance these nodules went? A. We saw nothing in the dissection underneath in connection with them.

Q. Was there any cutting into the substance of the lung underneath the precise spot in the nodule? A. I couldn't say it would be precise.

1625 Q. Then, sir, if there was no cutting beneath the substance of these fibrous nodules, how could you tell how far down the nodules went into the lung substance? A. I couldn't be positive about that, sir.

Q. In order to ascertain the extent of disease which these nodules indicated, wasn't it necessary to see how far they went into the lung substance? A. I think one could tell pretty well by examining the nodule itself, whether it was lung tissue or not.

Q. (Question repeated.) A. I answered that it would not be certain how far they went in.

1626 Q. Then in order to ascertain how far these nodules indicated a lung disease, you didn't pursue the inquiry to ascertain the depth of the nodules? A. I didn't cut in underneath them. The cutting was done in examining the lung under.

Q. I will ask you, doctor, whether, in your opinion, in order to ascertain the value of that opinion, is it a satisfactory examination of the indication of disease like a fibrous nodule to simply feel of the



surface? A. It satisfied me that it was not a cicatrix; had none of the characteristics of a scar.

Q. Was that all you looked for? A. No.

Q. What else did you look for? A. To know as to the texture of this, whether it was lung tissue projecting up, or whether it was a morbid growth, 1627 independent of the lung.

Q. Anything else? A. That would be mainly all.

Q. You found them to be fibrous, didn't you?  
A. I should think a portion of it was, and a portion not; I didn't dissect it.

Q. Wasn't it characterized there as a fibrous nodule? A. Yes; it was mainly fibrous in texture, as far as I could see.

Q. What do you mean by "pulmonary plithisis"?  
A. I mean consumption.

Q. And when these notes speak of these nodules as indicating pulmonary plithisis, they refer then to consumption? A. They do, in the notes. 1628

Q. If a man had consumption, or had had consumption, would there have been likely to have been scars or nodules on his lungs? A. Very likely.

Q. What would those nodules have been like?  
A. They would have been varied in structure; nodules are found in the lungs in various forms; some in one form of structure and some in another.

Q. What would nodules in the lungs be like?  
A. It might be a changed structure of the lungs, or it might be some other growth independent of lung structure. 1629

Q. Can you explain to us or the jury, a single physical indication as to the appearance of a nodule that came from lung disease or consumption?  
A. I say to that, nodules are found often in consumptive patients, which are not made up of the texture which belonged to the lung before; they

have grown in there ; they are growths in there as they grow elsewhere.

Q. (Question repeated.) Didn't you understand my question, doctor? A. I think so.

1630 Q. I will try and make it more plain ; can you give us a single description of a nodule resulting from consumption, so we could tell what it looked like? A. It could not be known, except a nodule was carefully inspected and dissected to know just what its texture was.

Q. Then in order to ascertain precisely what a nodule meant or is, the nodule itself should be dissected, should it not? A. That would be the accurate way to do.

Q. Was this done in this case? A. I don't think it was ; I am certain I didn't do it ; I will not be certain there was no division of it ; I don't think the tumor was divided.

1631 Q. Was there any dissection of that tumor or nodule at the time? A. I don't remember its being divided ; I don't think it was divided.

Q. Then in that respect, at least, this was not a perfect autopsy? A. Not so far as relates to that growth ; you could not say pathologically just exactly what elements entered into it ; I mean the building up of the tumor ; the substance of which it was made.

A. You recognize this as a tumor, do you? A. It projected up here, and had the characteristics of a morbid growth occurring on surfaces elsewhere ; you see nodules on bone.

1632 Q. Did you recognize that nodule as a tumor of the lung—yes or no? A. It was standing up here on the covering of the lung.

Q. (*By the Court.*) Do you call it a " tumor " or not, he asks.

*Witness.*—It struck me that it was not an independent growth, and had nothing to do with the lung growth.

Q. Do you recognize that as a tumor? A. A morbid growth—yes; that is, to the eye and feel, but not by dissection or microscope.

Q. What is a cicatrix? A. It is the result of healing of all forms of wound; it is a track or trace of tissue that is inlaid, filled in, that serves to hold the divided parts together and to fill up the chasm that has been made. 1633

Q. Is it good flesh? A. A cicatrix is never so good as the original tissue.

Q. Is there any nourishment, whatever, to that portion of the body known as a cicatrix? A. There is the nourishment through the adjacent textures that maintains its identity there.

Q. Are there any vessels in that part then, which will provide nourishment to that part? A. So long as it remains a perfect cicatricial tissue, it would not have the distinct vessels that are fed by the adjacent vessels. 1634

Q. What is the difference, then, between a cicatrix and a nodule? A. A cicatrix would be hard and nodular; tissue not sustaining; nodular in feel, I will say.

Q. You speak of Dwight's body being well made; was it well nourished? A. I couldn't say so well, only seeing him while he was dead, but I should say it was not well nourished.

Q. Why do you say you couldn't tell from the examination of the man's body after death? A. I couldn't be so positive in all respects.

Q. Considerable fat on the body, was there not? A. There was some fat. 1635

Q. Was there not a good deal? A. Yes; I should think so.

Q. Was there a single portion of the body that ought to be supplied with fat that was not well supplied? A. I think it was fairly supplied, from all I saw.

Q. When you say you don't think it was very well nourished, what do you mean? A. Why, I

mean that the nutrition hadn't been sufficient to keep up the tone of all the tissues properly. While the fat might remain there, still there would be a loss of tone in some of the textures of the body. It had been robbed a little of its nutriment, I mean.

1636 Q. Was there no other cause for not keeping up the tone of which you speak, that was observable to you, except the question of nourishment? A. The post-mortem showed some fault in the digestive apparatus, enough to account for the faulty nourishment.

Q. Wouldn't the keeping of the body on ice for forty-eight hours be likely to impair the tone of the body? A. I don't know that I see the point in your question.

Q. Can't you answer the question? A. I couldn't answer it without knowing more about it.

1637 Q. We will pass it. What do you mean by this in the notes, "Body—rigor mortis well marked, thick layer of subcutaneous adipose tissue; muscles well developed, good color"? A. I mean as it reads, "muscles well developed."

Q. What do you mean by "thick layer of subcutaneous adipose tissue"—what do you mean by that? A. That is the fatty tissue underneath the skin and the other portions of the body.

Q. What do you mean by the "Omentum thickly loaded with fat"? A. That varies; I mean that it was loaded with fat; that it was a fatty omentum.

1638 Q. Would that be a condition of the body to indicate that it was well nourished? A. It might be other than that; it might be too fatty, forming a degeneration.

Q. Wouldn't that be a fair condition of the body if it was well nourished; that the omentum was thickly loaded with fat? A. It would be, under some circumstances, and in others it would be an evidence of disease.

Q. In this body that you saw, then and there, would it be? A. That corresponded, as near as I can recollect, with the fatty deposition of fat about him; if there was any fault, it was too much fat.

Q. Are not these indications of flesh or of fat that I have called your attention to, indications of good nourishment of the body? A. Not always. 1639

Q. I ask you in this case? A. It would not be certain in this case.

Q. Wouldn't it be probable? A. That would be a general rule.

Q. When the fat is changed to a good muscular development, isn't it always a sign that the body is well nourished? A. Generally.

Q. And when the body ceases to be well nourished and falls away, isn't the fatty substance the first to disappear? A. Not always.

Q. I ask you generally? A. Perhaps generally, where there is no fatty degeneration; there are cases of degeneration where there is too much fat. 1640

Q. I ask you as to the usual rule? A. The general rule, yes.

Q. Was there not observed on that body these characteristics on and in the body—an indentation, furrow or groove in the neck; spots on the back and back of the right arm; a clot in the brain, a congested membranes of the brain, and substance of the brain, not abnormally congested; congested larynx, trachea and bronchial tubes, and bloody mucus in windpipe and bronchial tubes; fibrous nodules; congested lungs with dark fluid blood and ruptured air vessels at the top of one lung; 1641  
oedema of the lungs; heart natural and healthy; stomach with some undigested food; an apparently inflamed patch; congestion of mucous membranes of the stomach and intestines; congestion of the liver, spleen and kidneys, but no pigmentation of liver and spleen; were not these characteristics ob-



served at that autopsy in or upon the body of Mr. Dwight?

1642                      Objected to upon the ground that the question is compound. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

The counsel for the defendants then offered to show by the witness in the form of one single question—an answer to one single question—that all of these characteristics were observed by him at the autopsy.

Q. (Question repeated.)

Same objection, ruling and exception.

1643                      Q. You said, on your direct-examination, that the larynx was the windpipe—is that true? A. It is a portion of the canal that conveys the air; technically it would be above the windpipe. Anatomically it would not be.

Q. What do you mean by anatomically? A. I mean in its mechanism and structure.

Q. You mean by that it is not a part of the structure called the windpipe? A. It is connected so it helps make a canal for the transmission of air in and out.

Q. Is it a part of the windpipe? A. It has its separate anatomy and is joined to the windpipe.

1644                      Q. Is it a part of the windpipe? A. So far as respiration goes it would be. You couldn't breathe without it.

Q. I presume not, but is it a part of the windpipe? A. The wind goes through it.

Q. Is it a part of the structure known as the windpipe—say yes or no? A. I will say then what is meant by that portion of the windpipe would be the trachea, which is below the larynx; the larynx is above as you go up towards the mouth.

Q. The windpipe begins with the trachea? A. It joins the trachea below. They are united below, and so the canal continues along up until you get to the larynx, and through the larynx through the mouth.

*Re-direct-examination by Mr. Smith :*

1645

Q. When this dead body was there, and this paper here which has been examined was made, I want you to describe to this jury in words the proceeding of making that paper, who dictated it, and who wrote and who was by, and generally the way it was done, so we can see how these results came to pass? A. Dr. Delafield was the man who done the dissecting with the knife mainly; perhaps I might say wholly, unless some body held to help him a little; having begun at the head, the secretary, who was Dr. Daniel Burr, when he had developed what was here, he so named and called it out, and the attention of the surrounding doctors was called, to offer their comments, if they had any, or any objections; Dr. Burr entered it on the record; then he proceeded with another portion of the brain, or whatever it was, in the same way, and so he continued to do until the dissection was completed—he opening the parts and dividing them so and so, and calling attention of those who were around and who were looking and taking hold of these parts themselves, and offering whatever remarks they had to offer, and when they were through Dr. Burr read the report of that, and as the doctor who made the dissection named the part the doctor repeated it, and as he went on he repeated what Dr. Delafield had said, and when that branch of the operation was over, then he re-read it entire, and such suggestions and alterations as were necessary to make were made, if any, and so he continued to do until the examination was complete.

1646

1647

Q. When the suggestions were made and the

discussions were had in reference to the paper, were some changes made in the written matter of the notes? A. I think it would happen now and then; it would be entered, and after the suggestions were made, it would be changed—after the thing had been canvassed with the different ones.

1648 Q. What is the first change that you are able to call to mind, either from your memory or from reading the paper here? A. I think the one that I remember most about was in connection with the nodules.

Q. What was the paper, as originally written, so far as relates to the change? A. As originally written, it was as read here, and then, if I recollect rightly, that the cicatrix was left out.

Q. How did the original word occur? A. (Referring to paper.) I think Dr. Delafield stated when they were examining the lungs and came to these nodules—it was written as proposed by Dr.  
1649 Delafield, and then the question came up—the answer here—“Upper lobe of the apex, several small fibrous nodules, cicatrix, probably the result of old pulmonary phthisis.” Now a discussion came up at that point, and out of that discussion “cicatrix” was left out; I can’t give the words, perhaps, only there was some question whether that was a scar, and it was left out on that suggestion.

Q. Can you remember the substance of what was said as to what it was? A. It pertained mainly to that—whether that was a scar or not.

Q. Do you remember anything that was said  
1650 there as to the use of that word “cicatrix”? A. I know it was talked about; I can’t say the precise words that were used, and whether it was Doctor Burr or Doctor Ayer or some other one, but there was a little hesitation and conference over it, and the secretary was ordered to strike it out.

Q. Are you able to state whether that direction to strike it out was given in the presence of all the doctors there? A. Why, they were all there. Dr.

Delafield, who had charge of it said, "Very well, strike it out."

Q. Was there any express dissent or disapprobation as to that? A. I don't know of any.

Q. I ask you about what took place when you were all together there, was there any dissent or objection? A. No, sir.

1651

Q. After this paper was read through and these corrections were made, what was the next thing done with the paper? A. Signatures were put to the paper.

Q. As they appear to it now? A. I think so.

Q. Is there any other interlineation in this paper except this word? A. No, not that I know of, Fifteen doctors signed it.

*Re-cross-examination by Mr. Russell :*

Q. In order to test your recollection of the events of that autopsy the 18th of November, 1878, I wish to ask you again the question which has been propounded by the counsel for the plaintiffs, Mr. Smith, as to whether, according to your recollection, the only interlineation made in that paper before signing, was the insertion of the term "nodules" instead of "cicatrix"? A. As I remember, it was left as it had been made, with the erasure, "nodules" was left in.

1652

Q. (Question repeated.) A. The "cicatrix" was the part left out, the other is just as it reads there.

Q. (Question repeated.) A. Perhaps I don't understand your question.

1653

Q. Was that leaving out "cicatrix" and putting in of "nodules" the only interlineation that was made in that paper before signing it? A. It is all I remember about.

Q. (Paper handed witness.) Were there not at least four interlineations made in addition to that made on the very first page? A. That is the only

one I remember about, while these questions were suggested and discussed.

Q. (Question repeated.) A. I think there were some little verbal corrections perhaps at the time, but when we signed it——

1654 Q. (Question repeated.) I ask a categorical answer to that question, which, it seems to me, is simple.

*The Court.*—You have looked at the page—state whether there were four other interlineations on that page?

*Witness.*—Not that I recollect. I don't remember those.

1655 Q. After exhibiting it to you again, weren't there four interlineations at least on the first page of that paper before you signed it? A. I think I stated that in the discussion of these things they would be changed a little before they were entered, but I don't remember any interlineations after it was written, only the one to which I referred.

Q. Do you mean that the interlineations which appear on the first page of this paper were made after signing? A. I don't know.

Q. Do you know when those interlineations upon the first page of those notes were made? A. I don't know.

Q. Were the notes read over to you before you signed or did you read them yourself before signing? A. They were read over by the clerk.

1656 Q. And your reliance as to the accuracy of the notes depended upon the manner in which they were read—is that true? A. As well as my memory.

Q. Were the notes ever re-read after the interlineations were made in? A. Yes, they were re-read at the conclusion of the autopsy, or the paper was re-read then as had been corrected



from time to time along in making the examination.

Q. Have you a distinct recollection that the paper was read after all the interlineations were put into it? A. It was the final paper I know that we signed.

Q. (Question repeated.) I would like a direct answer to the question? A. I know about these little verbal changes along, and they were corrected.

Q. (Question repeated.) A. Yes, that is, the last I saw of the paper was when we signed it.

Q. You say you don't know whether the interlineations were all put in or not, do you? A. I signed the paper as read, I remember distinctly.

Q. Then that is all you know about it, is it? A. Yes.

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DANIEL S. BURR, called as a witness on behalf of the plaintiffs and sworn, testified as follows: 1658

*Examined by Mr. Smith.*

My father's name was George Burr; he was a doctor; I reside in Binghamton, New-York; have been a physician and surgeon, practicing my profession at Binghamton since 1868; I knew Walton Dwight; I knew him about the time he first came to Binghamton; I think in all about ten years; I knew him as a young man would know such a man; I had a personal acquaintance with him before his sickness; I never occupied any professional relation towards him. 1659

Q. (Paper handed witness.) Were you present when these notes of autopsy were made that have been here in Court? A. I made these notes; they are in my handwriting except the signatures; the signatures appended are genuine so far as I know; My signature and my father's signature are genuine

I don't know as to all; those names I know to be genuine, and know to have been signed by the parties by their own proper physical hands, are George Burr, Francis Delafield, J. G. Orton, J. H. Chittenden, C. B. Richards, D. Post Jackson, Lansing Griffin, T. L. Brown, A. Comstock, Frederick

1660 Hyde.

I acted as secretary of the autopsy to write the notes. The autopsy was appointed for the 18th of November, 1878; I was asked by Dr. Delafield to take the notes, secretary if you are a mind to call it so. The body was brought into the hall in the Spaulding House where the doctors had assembled; the clothing was entirely removed, and the surface of the body was narrowly inspected by the assembled doctors. Just before that Dr. Francis Delafield requested me to write at the head of the notes, "Autopsy of Col. W. Dwight November 18th, 1878, 9:15 A. M. Body put on ice November 16th, 11 A. M." I wrote them down just as near as I could in the exact words he uttered; then the body as I before stated was inspected.

1661

Q. Did you write down what was stated to you, or in the proceedings, what was given to you, as the matter to go on these notes? A. I did.

Q. And did you write it accurate and as it was given to you? A. I did; in nearly the same words as it was given to me.

Q. What is that paper you have in your hands? A. It is the original notes of the autopsy of Col. Dwight, made by Francis Delafield and the paper is written by me, and that is the paper and the signatures of which I have been just testifying; I have just read it through; I entered in that paper the statements that were given to me to be taken down as a part of the notes as accurately as I could.

1662

Q. Did you do it, or didn't you? A. I did; after I had taken them down, they were read over by me in the presence of the physicians and signed by each one in turn.

Q. Were they all together when this reading took place, all the gentlemen who signed it according to your best recollection? A. According to my best recollect, yes; the paper was read so they could all hear it.

Q. Some interlineations appear on the face of this paper, will you explain to the jury when and where those were made? A. They were made by myself at the time of the autopsy and before the paper was signed. 1663

Q. By whom? A. By myself.

Q. What is the first sentence where an interlineation occurs? A. The first sentence where there is an interlineation is "Dr. Swinburne notes a heavy indentation extending," interlined above that "upwards and backwards;" there is nothing struck out the words "upward and backward" are inserted.

Q. How did that come to pass? A. Doctor Swinburne talked so fast; the doctor was noting the direction of it, and was busy talking, and he would repeat it several times over, not always in the same words, and finally settled upon that—"upward and backward" as the direction; those two words were put in by me; Dr. Delafield told me to put them in; the next is "to right" interlined between the words "hyoides" and "around;" the "os hyoides" is a bone or the name of a bone; the way I came to put those in there was, I think, I was in a hurry to write it, and put those in on my own hook; there is no caret under that one, but they are simply written in the line above; I put them in before it was signed; the next one is "Dr. Swinburne and Dr. Ayer;" "Dr. Swinburne" is written above "Ayer;" there was discussion between Dr. Ayer and Dr. Swinburne in regard to the cause of this heavy indentation noted above; Dr. Ayer said, and I commenced to write it, "Dr. Ayer thinks the same caused by bending head and neck backward;" when I had written as far as "Dr. Ayer" Dr. 1664 1665

- Swinburne acquiesced in it, and then I wrote just above it, "Dr. Swinburne" and it read, "Dr. Swinburne and Dr. Ayer think the same caused by bending head and neck backwards;" the next interlineation is "nodules" on page 6 or sheet 6, either one; "nodules" appear to have been inter-
- 1666 lined between "fibrous" and "probably;" "upper lobe right lung at the apex several small fibrous nodules, probably the result of old pulmonary phthisis;" the word written in is, "nodules" and the word erased or scratched out is "cicatrices;" that was written first "cicatrices" and upon reading it over before the paper was signed, Dr. Delafield says, "no, no, I don't mean cicatrix, put in nodules," and so I did; I drew my pen through "cicatrix" and wrote "nodules" above; the next interlineation are the words on page 7, "a little, probably not over one-half ounce," interlined with a caret underneath, between the words "contains" and
- 1667 "fluid." "Right ventricle contains a little, probably not over one half-ounce, fluid blood." Dr. Delafield said, "Right ventricle contains fluid blood, a little, probably not over half an ounce." I had written as he spoke the words, and then I had to put that in. I put it in; he put the "a little, probably not over half an ounce," after the word "blood," and that was put in before. The next interlineation are the words, "not to exceed one-half ounce," between "blood" and "aortic," on the 7th page, reading, "left ventricle contains a little fluid blood, not to exceed one-half ounce."
- 1668 the next interlineation is the figure "3," between the words "in" and "glass" on the 8th page, so that it reads, "the contents of stomach was then placed in three glass jars." The next interlineation is the word "chronic," between the words "denote" and "Gastritis," so that it reads, "pyloric end of stomach, mucous membrane studied with small white spots, denoting chronic gastritis." The next interlineation is on page 9, the

word "large" between the words "of" and "intestine," so that it reads, "portions of large intestine were then placed in glass jars, 3 in number." That is all the interlineations I see.

After I had gone through the paper and made the interlineations as I have described, I read it through continuously from top to bottom in the presence of those who afterwards subscribed it; then it was signed and Dr. Delafield took it—he was the last man that put his name in it—and kept it in his possession. I next saw it at the Coroner's inquest five months afterwards, held at Binghamton at the Court House; some of the doctors who had signed the paper were there then—Dr. George Burr, Dr. Orton, Dr. Richards, Dr. Chittenden, Dr. Swinburne, Dr. Jackson and Dr. Griffin. 1669

Q. Are you able to state how the paper was disposed of then—what was done with it? A. It was handed to me to give testimony about the interlineations and erasures, then the Coroner took it. 1670

Q. At how early a period were you called, if ever, to treat Col. Dwight? A. I was in the office when he first called to consult my father, about the 11th of October, I think, 1878; I did not observe sufficiently as to be able to now describe what his personal appearance was then. I saw him October 15th, 1878.

I knew of Col. Dwight before I became his physician; I would meet him daily in Binghamton; he seemed every way healthy; I think I examined him for life insurance. I couldn't tell the dates; I was acting for an insurance company then; I can't state exactly how many of them I was acting for; I think it was in August, 1878, along the 21st to 30th; my father was present in the office, and we together made a thorough examination of the lungs and heart, as near as we could; we made an examination as to the murmur and the rhythm. We examined the urine; it was a thorough physical examination. As far as I can say about a fact, his 1671



physical condition at the time of that examination was good. He was a large man, large chest; he seemed every way healthy.

1672 I saw him the night before he died, and I saw him after he was dead, on the morning of the autopsy, the third day after his death—Monday morning; that was the first time I had seen him after his death. The body was then in a room in the Spaulding House, where it had been brought for the purpose of cutting up; that is the time I have been mentioning. I attended the funeral the next day; I also attended the Coroner's inquest or autopsy.

Q. When was it you last saw what was remaining of him that went into the grave? A. I think it was April 23, 1879, I saw the body of Col. Dwight after he was dead so as to examine the neck.

1673 Q. And did you give it such an examination as to enable you to know with definiteness and certainty as to its condition? A. Yes.

Q. Now state to the jury whether there was any groove or indentation across the front of the neck of Walton Dwight? A. There was no groove or indentation or crease across the front of the neck of Col. Walton Dwight.

1674 Q. The question is intended to be whether in the front, in the vicinity of that part of the neck that is called the "apple" there was any mark or unevenness of any kind of the surface of the skin upon this centre of the neck? A. There was none. There were marks as noted in the autopsy—indentation on the side of the neck and put in by Dr. Delafield on the solicitation of Dr. Swinburne. There were indentations from here running up lower on one side than on the other; there were folds on the side of the neck which were simply folds of a thick fleshy neck which had been chilled or grown cold in one position and then had been bent a little backwards, causing an indentation or wrinkle.

This did not extend across in front of the windpipe. I did not feel of it; I saw it plainly.

Q. Are you able to state whether on the back side of this supposed wrinkle or crease or depression, or whatever it was, there was anything having the appearance of parchment? A. I could see nothing having the appearance of parchment. 1675

Q. Was there any such thing or not? A. No.

*Cross-examined by Mr. Russell:*

Q. Was there or was there not, a heavy indentation on both sides of the neck? A. Yes, a heavy indentation or fold.

Q. Why do you now call it "fold" when you called it "indentation" at the time of the autopsy? A. I didn't call it indentation at the time of the autopsy.

Q. Did you not subscribe to the notes that were then made and assent to them? A. Yes. 1676

Q. And did not those notes describe this as a heavy indentation? A. They described it as Dr. Swinburne noting it as an indentation.

Q. Didn't they describe it as a heavy indentation? A. Yes.

Q. Did you not understand that that note was adopted by all of the doctors then present? A. Yes.

Q. Why then do you now, at the suggestion of counsel call it a "fold"? A. Because it was put in at the solicitation of Dr. Swinburne.

Q. Does it make it any the less or any the more true, because one man or another solicited? A. No. 1677

Q. Does it alter the force of the language in your mind, in the slightest degree, because Dr. Swinburne unfortunately suggested it? A. No.

Q. Why then do you keep referring to Dr. Swinburne in trying to answer the questions in re-

gard to this indentation? A. I don't know why I do.

Q. Was that indentation there in that neck the very first time you saw it after death? A. Yes.

Q. Did that indentation remain upon that body unaltered in size or character the very last time you  
1678 saw that body? A. No.

Q. Was it greater or less the last time you saw it? A. It was less.

Q. That was at the time of the coronor's inquest, was it? A. Yes.

Q. Had the parts around the neck at all decayed? A. Yes.

Q. Was it for that reason that it was then less in size? A. Yes.

Q. Then that indentation in that neck caused as you say you think it was, remained there from the first time you saw it until the last time you saw it?  
A. An indentation remained there.

1679 Q. That indentation remained there? A. There were two.

Q. I am talking about the indentation that extended on both sides of the neck. A. There were two indentations, one on each side of the neck.

Q. Then all the criticism you make to my question in answering is, that there was one indentation on one side of the neck and another on the other side? A. Yes.

Q. Now assuming those two marks to be a continuation of the same indentation, was the indentation that you saw in April, 1879, the same indentation you saw the first time you perceived this dead  
1680 body? A. Yes.

Q. Do you state this was the character of the indentation; "a heavy indentation extending upward and backward from os hyoides to right around back of neck and on left side below thyroid cartilage running upward and backward at an angle of about forty-five degrees," is that correct, as I have read, yes or no? A. I don't know.

Q. Have you no recollection on the subject? A. Yes.

Q. Why don't you know? A. Because I would answer that question if I have the original minutes before me.

Q. (Minutes referred to, handed witness.) You can't answer the question I have asked you from mere recollection? A. I can't carry in my mind all the features of the question. 1681

Q. Can you answer my question from recollection, without the aid of notes? A. No.

Q. (Question repeated.) A. Yes, nearly.

Q. Why do you now call it two indentations when you called it a heavy indentation then? A. There was one on one side of the neck and one on the other side; that is the best answer I can give.

Q. Why didn't you note, then, it as one on one side of the neck and one on the other side of the neck? A. I should probably, if I had been conducting the autopsy. 1682

Q. Didn't you write the notes yourself? A. I wrote as directed.

Q. Didn't you feel entirely free to criticise the language of the notes you yourself were committing to paper and which you yourself say you signed as a respectable physician. A. Certainly.

Q. Why didn't you criticize this thing if you now criticize as two indentations? A. It was only one that was noted, I put it down as was ordered.

Q. It was only one noted then? A. As the notes say.

Q. Was there more than one indentation noted by anybody on that occasion? A. Yes, and spoken of. 1683

Q. Who spoke of it? A. I think Dr. Swinburne spoke of another one showing each side of the neck, and I think Dr. Griffin did.

Q. Wasn't the indentation which was most marked and most perceptible noted by every doctor there, as a heavy indentation extending to both

sides of the neck? A. Yes, it was signed that way.

Q. I come right back to the question of the motive or object for your now trying to separate these two indentations and make two of that indentation? A. I have no motive at all.

1684 Q. Hasn't it been suggested to you by counsel for the plaintiff in their talk with you in some manner that there was more than one indentation there? A. No; it has not.

Q. Has it been suggested to you in any other quarter since that autopsy that there was more than one indentation? A. No.

Q. Has anything since that autopsy suggested to your mind the advisability of separating this heavy indentation into two? A. No; not at all.

Q. Are you more sure of your recollection now as to the appearance of that body than you were when you were sworn on the coroner's examination? 1685 A. No, I don't think I am.

Q. Is your memory as fresh now as then? A. Probably not.

Q. You say you didn't put your finger into this indentation? A. No.

Q. Did you see anybody that did? A. I was then writing, and I can't say that I did.

Q. Did you see anybody do it at the second autopsy? A. Yes; Drs. Swinburne and Sherman put their fingers to find one where they knew it was.

Q. Can you say whether they put their fingers 1686 inside of the furrow or not? A. Yes, I think they did.

Q. Do you mean to say it was not the same indentation that existed there at the first autopsy? A. That is just what I mean to say.

Q. You swear it was not? A. I swear I saw them put their fingers in another indentation.

Q. Do you swear they did not put their fingers



in the same indentation that existed at the first autopsy? A. I wouldn't swear to that.

Q. In writing the notes on the first autopsy, did you write them on separate sheets of paper? A. I wrote them on separate slips of paper like those; they were separate.

Q. When were they attached together, if ever? 1687  
A. I think here in Court, if I remember right.

Q. On this trial? A. I think so.

Q. The first time to your knowledge? A. Yes; but I had not thought of it before.

Q. They were not attached together when the doctors signed the last sheet? A. Not to my knowledge.

Q. Did you have more than one set of notes there? A. I shall have to answer it yes and no.

Q. If yes and no is the truth, we will proceed further? A. Well, I can tell it better in my own language in regard to that.

Q. Did you copy more than one set of notes? 1688  
A. No.

Q. Did you try to copy more than one set of notes? A. Yes.

Q. From beginning to end? A. No.

Q. At what point in the proceedings did those notes terminate? A. I think before the first page was finished.

Q. And did you undertake to keep any more?  
A. No.

Q. Did you ever make a copy of these notes?  
A. Yes.

Q. Where is that copy? A. In my pocket. 1689

Q. And will you let me see it? A. Yes. (Copy produced.) It was made by me I think during the coroner's inquest; I think in Dr. Orton's office.

Q. And is this copy the one that you used at the coroner's inquest in detailing those things you noted at the autopsy? A. No; I used there the one that the Court has.

Q. The original? A. Yes.

Q. In the original autopsy, did you note on paper as follows : "Cicatrix on external aspect of left thigh, about its middle, probably from a gun-shot wound ? A. I think I did ; it sounds something like it.

1690 Q. Did you further note : "Doctor Swinburne notes a heavy indentation upwards and backwards from os hyoides to right around back of neck and on left side below the thyroid cartilage, running upwards and backwards at an angle of about 45 degrees ? A. I think so ; something similar to that.

Q. Did you also note this : "Dr. Swinburne and Dr. Ayer think the same caused by bending the head and neck backward" ? A. Yes.

Q. Did you also note this : "Posterior aspect of body—posterior aspect of left thigh—at its middle another cicatrix as from a bullet," and post-mortem discoloration of posterior portion of body ?

1691 A. I think so.

Q. And this : "Several small ecchymoses in skin of back and shoulders; anterior part of right arm small ecchymoses" ? A. I think so ; that sounds something like it.

Q. And this : "Inner surface of scalp and outer surface of calvarium, nothing to note" ? A. That sounds like it, I think that is it.

A. And this : "Dr. Swinburne notes fluid blood oozing from vertex of skull on removal of calvarium," and "skull of normal thickness and density, inner surface of skull cap normal" ? A. Yes.

1692 Q. And this : "Dura mater external surface adherent to skull" did you note that ? A. I think so.

Q. Will you please to state how the inner surface of the dura mater could adhere to the skull ? A. I misunderstood you ; I would not swear that it could.

. It could not, could it ? A. I think not.

Q. "Pacchionian bodies unusually large and

perfect through the dura mater" is that right? A. No.

Q. That was not in your original notes? A. No.

Q. What difference was there in that sentence which I last read? A. It is "project" through, I think.

Q. The word "project" instead of "perfect"? 1693  
A. Yes; I think so.

Q. And this: "Dr. Swinburne wishes to note the oozing of blood from dura mater opposite point in skull where it oozes. Inner surface of dura mater on right side unusual vascularity," is that right? A. I think so, but I am not certain.

Q. What is there about that, that you are not certain of? A. About the "dura mater" and "unusual vascularity."

Q. I will read from the notes: "Inner surface of dura mater on left side unusual vascularity"?  
A. That is right then.

Q. And this: "Inner surface of dura mater on left side, chronic hemorrhagic pachy-meningitis, with a small extravasation of blood on the left side over the posterior portion of the parietal and anterior portion of occipital lobes"? A. I think that is so. 1694

Q. "Pia mater of convexity normal, except discoloration over occipital lobes from blood"? A. Yes; I think that is it.

Q. "Base of skull, dura mater, normal"? A. Yes.

Q. "Base of brain, pia mater normal, anterior, middle and posterior cerebral arteries normal"? 1695  
A. Yes.

Q. "Ventricles of brain normal"? A. I think so.

Q. "Substance of cerebral lobes normal as to color and consistence, except that the grey matter is a little darker than usual"? A. Yes.

Q. "Brain neither congested nor anæmic"?  
A. Yes.

Q. "Corpora striata, optic thalami, corpora

quadrigemina and medulla oblongata normal" ? A. I think that is it.

Q. "Weight of brain three pounds four ounces" ? A. I think that is it.

1696 Q. "Body—rigor mortis—well marked ; thick layer of subcutaneous adipose tissue, muscles well developed, good color ; omentum thickly loaded with fat" ? A. Yes.

Q. "Abdominal viscera in normal position except the liver, which is pushed upwards, and the pyloric end of the stomach, which is lower than it should be" ? A. I think that is it.

Q. "Thorax, lungs and heart in natural position, except that the lungs are unduly inflated, and that the right lung extends a little to the left of medial line" ? A. I think it was the left lung ; I am not certain about that.

Q. (Paper handed witness.) Those are the original notes. A. It is the right lung.

1697 Q. You mean by the lung being unduly inflated that the upper part of the lung being filled with air when they were opened, it escaped ? A. No, that is not what I mean.

Q. Do you mean filled with blood and water ? A. No, the lungs were filled with air and held there, or seemed to be.

Q. And the upper portion especially ? A. I don't remember particularly the location of it.

Q. What was it that held the air there ? A. I am sure I don't know.

1698 Q. And you made a report of the post-mortem examination and don't know ? A. I wrote the notes.

Q. Did you make no observation of the body ? A. Yes.

Q. And you don't know what it was that held the air in those lungs ? A. I don't know ; no.

Q. "Left pleural cavity old adhesion;" is that right ? A. Yes.

Q. What do you mean by old adhesions ? A. The

adhesions of the pleura to the pleural surface—to the walls of the chest—the covering of the lungs to the walls of the chest.

Q. Is that an indication of disease? A. Not necessarily.

Q. Is it a usual indication of disease? A. No.

Q. Is it an indication of health? A. No. 1699

Q. Was it an indication of—anything? A. Yes.

Q. What? A. That there has been disease.

Q. In other words, that there has been a disease called pleurisy? A. Possible.

Q. Isn't that a fair indication from the fact? A. No.

Q. I ask you whether it is possible for such adhesion to come from anything else except disease? A. Yes: an injury.

Q. Don't that produce disease? A. It is not disease, but it may produce disease.

Q. Then, with the exception of a mechanical injury, these old adhesions inevitably indicate disease? A. Oh, yes. 1700

Q. In that connection, is pleurisy a common accompaniment of consumption? A. I don't know; I am not an expert in that respect.

Q. But have you not noted in this autopsy the indication of disease afforded by the adhesions, and also the indications of pulmonary phthisis or consumption? A. No; I have not; I didn't note either; I put in the notes old adhesions and old pleuratic adhesions, but I didn't note the disease.

Q. Didn't you note these two things that are actual indications of these diseases? A. Why, yes. 1701

Q. "About four ounces of serum in bottom of pleural cavity; no adhesions on right side:" is that right? A. I think so.

Q. "Four ounces of clear serum on right side, amount of serum estimated and not measured"? A. I think that is it.

Q. What do you mean by serum? A. It is the



watery part of the blood; a good name for it would be water.

Q. "Pericardium" normal? A. Yes; the pericardium is the membrane around the heart—the heart case.

1702 Q. "Left lung one pound and three-quarters, bronchi congested and coated with mucus, upper lobe congested and œdematous, lower lobe still more congested and œdematous, right lung two pounds"? A. I think that is it.

Q. "Bronchi congested and coated with mucus, upper lobe at apex several small fibrous nodules, probably the result of old pulmonary phthisis"? A. Yes.

Q. By old pulmonary phthisis you mean consumption? A. Yes; that is the common name for it.

Q. "Rest of upper lobe congested and œdematous, middle lobe normal, lower lobe congested and œdematous;" is that right? A. I think so.

1703 Q. "Heart, weight 15 ounces; right ventricle contains a little fluid blood, not over one-half ounce; pulmonary valves a little thickened at their attached edges, otherwise normal; cavity of right ventricle about normal size; walls three-sixteenths inch thick; tricuspid valve slightly thickened; endocardium of right ventricle and auricle normal; left ventricle contains a little fluid blood, not over one-half ounce; aortic valves a good deal thickened at their attached edges; wall of left ventricle three-quarters of inch thick; cavity normal size; endocardium normal; left auricle contains a little clotted blood; mitral valve thickened; capillary muscles, slight increase of fibrous tissue; spleen, weight three-quarter pound, normal in color;" is that right? A. I think so, except small clots was in one place.

1704

Q. I have given it small clots; was that correct? A. I think so.

Q. "Spleen, weight three-quarter pound; normal

in color; consistence a little soft''; is that right?

A. I think so.

Q. "In a wash bowl, rinsed out clean, the stomach was placed before opening; the stomach contains a considerable amount of thick greyish fluid, containing portions of undigested food, the contents of the stomach were then placed in three glass jars, half in one, one-quarter in each of other two. The stomach at the fundus, mucous membrane softened and partly destroyed by post-mortem changes, pyloric end of stomach, mucous membrane studded with small white spots denoting chronic gastritis." Is that correct, so far? A. I think so. 1705

Q. "The stomach was then divided and placed in three jars sealed and labeled 'Stomach of W. Dwight, November 18, 1878.'" Is that correct? A. I think so.

Q. "Large intestine contains faeces, solitary glands slightly swollen throughout its entire length, mucous membrane not congested; portions of large intestine were then placed in glass jars, three in number, sealed up and labeled, 'Large intestine of W. Dwight, November, 1878.' Small intestine contains a moderate amount of fluid faeces; the duodenum a little congested, and a little swelling of its solitary glands in its upper part." Is that right? A. I think so. 1706

Q. "Upper part of jejunum, mucous membrane not congested; a single agminated gland swollen. Ileum, upper part moderate congestion, and some increase of mucus. Agminated glands a little swollen." Is that right? A. I think so. 1707

Q. "The lower portion of the ileum general congestion and pretty marked swelling of the solitary and agminated gland. Portions of the small intestine placed in three glass jars, sealed and labeled 'Small intestine of W. Dwight, November 18, 1878?'" A. I think so.

Q. "Liver four pounds 15 ounces, fairly con-

gested, rather more than usual, normal color and consistence" ? A. I think so.

Q. "Ureters left rather normal; left kidney, weight 6 ounces, uniformly congested, capsule slightly adherent to surface of kidney, surface of kidney normal to naked eye." Is that right. A.  
 1708 Right rather normal.

Q. "Right rather normal; left rather normal" ? A. I don't understand that "rather."

Q. Those words, "Right rather normal" and "Left rather normal." The right ureter and left ureter normal? A. I think so.

Q. "Left kidney six ounces, uniformly congested; capsule slightly adherent to surface of kidney. Surface of kidney normal to naked eye" ? A. I think that is so.

Q. "Right kidney weight seven ounces, marked general congestion; capsule slightly adherent; surface smooth; no evidence of disease." Is that so ?  
 1709 A. I think that is so.

Q. "Bladder normal, tongue coated, papillae swollen, tonsils normal for an adult, pharynx normal," is that right ? A. Yes, I think so.

Q. "Epiglottis, larynx and trachea congested and coated with mucus—portions of liver and kidneys were placed in glass stopped bottles, and sealed and labeled, 'Liver and kidney of W. Dwight, November 18, 1878'; peritoneum normal. Report of this autopsy read before those present, and no objection made thereto"; is that right ?  
 A. I think so, as far as I can judge from recollection.  
 1710

Q. Now, did you not testify before the coroner's jury that these notes, after they were changed or interlined, were not re-read before the physicians ? A. No.

Q. Was there anything about any of the organs to which the notes of the autopsy relate, which left any evidence of disease whatever that you say is not noted ? A. No.

Q. Did you not testify in these words : " I said I had no recollection of its being read as amended," referring to your notes ? A. No; I think not.

Q. Are you sure that you didn't swear to that language : " I said I had no recollection of its being read as amended " ? A. No; I think I did not.

1711

Q. (Question repeated.) A. Yes, I think I am.

Q. Why do you put in that word " think " ; is it to qualify the rest of the sentence ? A. No, not necessarily.

Q. Can't you say out and out you are sure ? A. No.

Q. I read to you from questions put to you by Dr. Bassett on page 355 : " When you were writing the report of that autopsy, did you have an opportunity to examine the pathological condition of the parts ? A. I did. Q. The doctor would examine

the parts before him, and then invite all present to look at them and inspect them, and he said to you to put down, that accounted for the little discrepancy ! A. Yes, sir." Did you so testify ? A. Yes.

1712

Q. " In the morning ? A. Yes. In the wording of the report, and Dr. Delafield made one copy of the autopsy himself, and probably changed the wording and phraseology." You so swore ? A. Yes.

Q. Was there anybody that used the scalpel on that autopsy excepting Dr. Delafield ? A. I think some one assisted him to open the intestines.

Q. Who was that some one ? A. I don't remember now.

1713

Q. And with the exception of some one helping him to open the intestines, no one used the knife excepting Dr. Delafield ? A. I think not, no.

*Re-direct-examination by Mr. Smith :*

Q. Do you recognize several gentlemen here who

were at the inquest? A. I do; every facility was afforded for making an investigation by anybody, so far as they manifested any desire; that included Dr. Swinburne. Dr. Sherman and Dr. Bridges were not at the first autopsy.

1714 Q. Those depressions of the skin on this man's neck—were they connected together or not? A. No; there was one on each side of the neck.

Q. And was the one higher up than the other, and if so, how did they compare in that respect?

A. One was on one side as noted—it was opposite the os hyoides—

Q. Which was the nearest to the top of the head?

A. I couldn't tell you just now without referring to the notes; I said one was higher up than the other; I think it was the one on the right; I can't say exactly how much nearer it was to the jaw, or how much higher up it was than the other.

1715 Q. Well, about? A. About three-quarters of an inch.

*Re-cross-examination by Mr. Russell :*

Q. Was Dr. Henry Smith at the autopsy? A. I think not, I wish he had been.

Q. Was he there at the post-mortem examination? A. No, but I wish he had been.

Q. Did I ask whether you wished he had been? A. No.

Q. Why did you add those words? A. Because it came to me.

1716 Q. It was an inspiration at that time? A. Call it what you choose.

Q. You have taken a great deal of interest in this case? A. Well, no, not particularly.

Q. Why do you put in that word "particularly?" A. Because it qualified the "No." I have been interested as a physician in this case.

Q. Haven't you been interested personally? A. No.



Q. Are you not one of the beneficiaries in the will? A. No.

Q. You are not referred to in the will? A. No, not at all. I haven't been helping the lawyers on medical subjects, nor suggesting questions to them, not one.

Q. Or information of any kind in the case of the matter of these insurance policies? A. They have asked me questions. 1717

Q. Have you given them information? A. I couldn't say as to that.

Q. Did you say that every facility was offered those outsiders at that first autopsy to assist in the autopsy? A. Every facility was given to outsiders to be present at the autopsy, and to look on and see.

Q. Anything more? A. No, nothing more.

Q. Was there a single person outside of that conclave of doctors that were there around the dead body, that propounded one question or suggested one thing? A. No. 1718

Q. Didn't you understand that the gentleman's questions to you on re-direct-examination were confined to the first autopsy? A. I understood so, and I think I asked him; I said that Dr. Sherman and Dr. Bridges were not present at the first autopsy.

Q. I ask you further as to your testimony before the coroner's jury, did you state this on page 389, "I desire to state that Dr. Delafield asked me to take the notes, and I went to my desk and took from there a package of paper containing six sheets, that there was no means by which I could make a duplicate page, or any opportunity of it. The whole six sheets were written on one side of the paper, and after they received my signature they did not come into my hands again until I took the last page from Dr. Swinburne in the Spaulding House and carried it to Dr. Delafield," you so stated? A. Yes. 1719

Q. I will ask you if you tore up any of the paper? A. I did not; there were just six sheets, and if you will look at the report of the autopsy you will find twelve sheets pinned together and numbered from 1 to 12 inclusive.

1720 Q. On page 390: "I was in error when I said I got it myself; father did; he went to the desk and got the paper; it was paper I recognized as from my desk," you so stated? A. Yes.

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JAMES E. LEE, called as a witness on behalf of the plaintiffs, and sworn, testified as follows:

*Examined by Mr. Newton:*

1721 I reside in Binghamton, and knew Walton Dwight; in November, 1878, I was employed at the Spaulding House; I was there the night of his death; during that night they had a dance there, in the hall: I went to Col. Dwight's room: there were when I got there W. F. Spaulding, Charley Hull and Mrs. Dwight; I went there from around front to the cottage, entering the front door; the front door was shut; the hall door going into sitting room was open; the front door was unlocked; after entering the hall I went into the sitting room and then into the bedroom; there I found W. F. Spaulding, Charley Hull and Mrs. Dwight; when I entered the room Spaulding had his arm  
1722 partly around the Colonel's shoulders, and he had a spoon pouring brandy in his mouth; Hull was partly holding him; at that time Mrs. Dwight was at the side of the bed, rubbing his hand; at that time he was breathing; I went after some hot water—Mrs. Dwight asked me to go after some; I went around through the house into the kitchen, and got a pail of hot water; I brought it back into the room and poured it into the wash bowl, and set it

aside of the bed, and then Mrs. Dwight put his hand into it, and then rubbed his hand ; when I got back he lay bolstered up in bed ; Spaulding was there yet—holding his tongue—holding his tongue with his fingers ; at that time I noticed he was breathing ; I should judge that his hands were kept in that hot water four or five minutes ; after that I helped undress him ; I took off his undershirt ; unbuttoned his collar and took off his undershirt ; that was taken off over his head ; me and Mr. Ayers, the undertaker, did that ; I did not stay all the while he was being washed ; I saw him again after he was washed ; his body was in the same room ; we helped put it on a board or boards ; they carried it out—that was after I left ; while I was gone into the hall they carried it out ; they had a dance up there in the hall and I went up to stop the dance ; it was stopped upon the announcement of his death ; after that visit I think I returned again to the room where the body was then lying.

1723

1724

Q. (*By the Court.*) Describe what opportunity you had of seeing the neck ? A. We took his underclothes off ; we had to roll him over once to get off his shirt—partly over ; then he was naked.

Q. Was there any crease, or line, or mark around his neck at that time ? A. No.

*Cross-examined by Mr. Russell :*

I am a hotel porter at the Exchange Hotel in Binghamton ; I have followed the business of a hotel porter for twenty-three years ; on the night that Walton Dwight died I was porter at the Spaulding House ; I commenced there at the Exchange Hotel twenty-three years ago, and went from there to the American, and from there to the Spaulding House, and then back to the Exchange ; I am forty-one years old.

1725

Q. What were you doing the night Dwight died.

before you heard of his death? A. I was up in the dance hall.

Q. Dancing? A. I probably was.

1726 Q. About what time of the night did you hear of his dangerous condition? A. I should judge about eleven o'clock, I couldn't say exactly; about that time I should judge; may be a little after; from there I went down to the hotel in the office.

Q. Did you see Warren Spaulding in the office? A. No, he was not there then.

Q. From the office you went where? A. To Col. Dwight's room; I went out of doors to go into the room; I went along the front way.

Q. You say the front door of the cottage in which he was lying was unlocked at that hour, after eleven o'clock at night? A. Yes.

Q. That was after eleven o'clock? A. About that, I should judge.

1727 Q. You went in at the front door and up into the sitting room, did you? A. Yes; the sitting room was right inside and on the first floor; the door to the sitting room that led from the hall into the sitting room was open. I found three persons inside, as I have described.

Q. Did you particularly notice his breathing? A. Yes.

Q. Did you count the number of his respirations? A. No.

1728 Q. Can you tell about how often he was breathing? About how many times a minute? A. Well, sometimes he would breathe a little faster, and times slow and easy.

Q. Can you tell about how many times a minute he was breathing? A. Four or five, I should judge, and maybe more and maybe less; I couldn't tell; I don't think it was any less.

Q. Is four or five about the average number of breathings, do you think? A. I couldn't tell anything about it.

Q. Why did you say four or five? A. I should

say it was that ; that is as near as my present recollection will serve me.

Q. He would draw a breath about once in twelve or fifteen seconds? A. A little faster than that, I should think.

Q. Faster than that, you should think now? A. I don't know but it was. 1729

Q. Is there anything more you remember about his breathing? A. I don't know as there is ; I did not feel of his pulse ; I didn't go in there for the purpose of making any examination. I didn't have that in my mind when I went in.

Q. Did you see any other sign of life about him? A. Well, he hardly opened his eyes once or twice, I think.

Q. Any look of intelligence in his eyes? A. No, nothing particularly.

Q. Was his chin dropped down on his neck. A. Yes. 1730

Q. Was his chin touching his neck? A. When they held him forward it did, and when they didn't it went back on the pillow; when they went to pour the brandy down they would hold it back.

Q. Otherwise his chin rested on his neck or breast? A. Yes, when they set him up.

Q. The fact was, his chin rested on his breast when he was not held by others, didn't it? A. I couldn't say that.

Q. How long were they engaged in trying to soften his hands in hot water? A. I should think four or five minutes, maybe.

Q. Was the water quite hot? A. No, not very ; 1731  
I couldn't get any very hot water; it was lukewarm; it was as warm as I could get it ; I went after hot water.

Q. What did you bring lukewarm water for? A. It was the best I could do under the circumstances. I helped take off his underclothes ; he had on two shirts. His undershirt was worked up pretty well; rolled up under his arms.



Q. Worked up under his arms? A. Yes, about half way up. Col. Dwight didn't have any collar on at all.

Q. Didn't you say, on direct-examination, you took his collar off. A. He had no collar on.

1732 Q. Did you say, on the direct-examination, he had a collar on? A. I didn't understand the collar business; shirt-band.

Q. Didn't you swear, on the direct-examination, within the last twenty minutes, you took his collar off? A. I unbuttoned his shirt-band, I mean.

Q. (Question repeated.) A. I don't remember as I said collar. I didn't mean a shirt collar. I thought I said a shirt band; I might have said collar—no, I didn't say anything about collar; I didn't take any collar off; I went for the undertaker that night; I did not go for the doctor; I went for the undertaker within ten or fifteen minutes after he died; no doctor had got there then; 1733 I don't know that any one went for the doctor before I went for the undertaker; I did not go for the undertaker and stop for the doctor on my way back. I am certain about that.

*Re-direct-examination by Mr. Newton :*

Q. The front door of the cottage, was that usually locked nights? A. After all the trains got in at twelve o'clock, it was locked.

Q. Was it locked before twelve? A. Hardly ever locked it unbeknown to the hotel men.

1734

*Re-cross-examination by Mr. Russell :*

Q. Now, besides Warren Spaulding, Mrs. Dwight and Mrs. Owen, was there any body in the room? A. I don't remember seeing Mrs. Owen.

Q. Besides Mr. Dwight and Spaulding was there any body there? A. No, not that I saw, except

Mr. Hull, those three are all I remember seeing in there.

Q. You didn't see Alvin Spaulding or his wife?

A. No, I didn't see him there at all.

Q. Is Warren Spaulding in the room? A. I don't see him.

1735

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JOSEPH H. CHITTENDEN, called as a witness on behalf of the plaintiffs, and sworn, testified as follows :

*Examined by Mr. Smith :*

I am a physician and surgeon, and reside in Binghamton ; have practiced my profession at that place seventeen and a half years ; I knew Walton Dwight ; have known him most of the time since he came to Binghamton ; I don't remember when he came there. I must have known him perhaps eight or ten years. My attention was first called to his physical condition when I first saw him. 1736

Q. And after that was there anything special that occurred that called your attention to his condition? A. Nothing special, no.

Q. Not even death? A. Well, I saw him when dead. Before that time I had examined him for life insurance on two separate occasions ; I examined him for the Washington Life ; that was at the time he took out a large amount of insurance once before, eight or nine years before 1878. It 1737 was when he took out the first batch. At that time I gave him as careful an examination as I knew how. I though I observed him with sufficient closeness to enable me to determine what kind of condition he was in. I examined his lungs, in every particular as well as I knew how. I pronounced him healthy. I thought the certificate to be a true statement. I examined him again, I

- think some time in August, 1878 ; I don't remember the company ; it was to test his health with the view to a life insurance ; it was equally thorough in its performance. I found him sound. I saw his body after death, in the hall at the Spaulding House, on the occasion to which reference has already been made here by the other witnesses, at the autopsy. I saw the body in the hall ; it was lying on a board ; an inspection was made of the body, both on the front and back part of the body ; then the brain was next examined ; then all the organs on the internal part of the body were examined in detail by Dr. Delafield, making the dissection, and giving the notes to Dr. D. S. Burr to write out—dictating to Dr. Burr what to write. There were various things noted that attention was directed to on the outside of the body, among which was this mark upon the neck which has been spoken of. Dr. John Swinburne called attention to that. The head was on a head-rest thrown forward ; when the head was dropped back it showed a mark upon the neck and Dr. Swinburne says, “What is this” various medical gentlemen examined it as well as myself. That is not all that was said about it. It was closely inspected. There was considerable examination of the neck by the various gentlemen, and various opinions given as to what was the occasion of it. Finally Dr. Delafield directed Dr. D. S. Burr to write “a heavy indentation” and described it on the neck.

- Q. Describing it how ? A. As arising at a certain point on the Adam's Apple, and running backward and around the neck ; described it one side and then described it on the other side, as starting at a different point on the neck and running also backwards. Afterwards there was conversation as to the cause of it. Dr. Ayer stating it was caused by the manner in which the head had been placed while in the ice box and cooling, and it was de-

scribed that when the head was thrown back these folds separated leaving this indentation.

Q. When Dr. Ayer expressed that as the probable cause what did John Swinburne say about it?

A. Well, he said probably it might be so. Then Dr. Delafield ordered Dr. Burr to write "Dr. Swinburne, and Dr. Ayer think it is caused by 1741 bending the neck forward."

Q. When Dr. Delafield said that what did these gentlemen say to it? A. There was no objections made to it. I saw this mark upon the neck, and I felt it; I looked at it so as to know what color it was. The neck was a short, thick, fleshy neck, and before the head rest was taken away the head was thrown forward, and upon taking that away the head dropping back opened these folds across the neck. They were soft; there was no unusual feel about that different from any other portion of the neck; just simply seemed to be that the head was thrown upward. They were folds made as the head was thrown forward. They started from the front side of throat, one from the upper portion of the Adam's Apple and passing around towards the back of the neck, and the other started at a lower point, perhaps half or three-fourths of an inch lower, and went back in the same way; these lower points were not opposite; there was no mark of any kind between those two ends and across this part of the neck that is known as the windpipe—they were not joined at all; there was no mark there at all. 1742

Q. Wherever there was a mark on this man's neck did you feel of it so as to know what it was? 1743

A. Yes, and looked at it; on the back side of it there was nothing to be felt particularly; there was simply the fold there, and it was opened by throwing the head back and the parts had become—the post-mortem stiffening had taken place—I don't mean stiffening, but the parts felt like the other portions of the body.

Q. I ask whether there was on the back side of this, this half round appearance? A. No, it was more like as a fold would be; not particularly round.

Q. More like a fold in your garment? A. Yes.

Q. Now, was there any discoloration or stripe or part there that could be seen there different from  
1744 the surrounding part? A. No, there was no such thing.

Q. Well, about this parchment appearance—what was there about that? A. It had no such feel.

Q. How do you know? A. I felt of it.

Q. Did you observe so as to speak with certainty about the condition of this man's lungs? A. I observed pretty closely, yes; there were no cicatrices in the lungs; there were nodules on the apex on the top of the right lung; it was on the surface, these were little bodies on the surface of the lungs; I think that I observed three little bodies on the  
1745 surface of the lung; perhaps they were as large as the half of pea split in two, moderate sized pea, closely together upon the upper portion of the right lung, having a somewhat hard feel; there were no other of these things in the lungs; some portions of the lungs were somewhat congested or filled with blood in some portions—that is what I mean by “congested.”

Q. Anything else? A. Nothing special as I now remember; the lungs were pretty thoroughly filled with air and in a congested condition; nothing else about the lungs that I remember.

Q. The fact that a man dies and not having  
1746 emptied his lungs of air, does that indicate anything that you know of as to his death? A. No; I have heard the description given by these doctors here to-day about the proceedings in dissecting this man's body.

Q. State what was done in the autopsy? A. As I said before, the brain was opened, or the brain was examined; the scalp was cut across and laid back, and the upper portion of the bones of the



skull were sawed through, and then the membranes of the brain were examined ; then the brain was removed and examined ; it was taken out and then sliced up afterwards ; I believe at one point on the membrane of the brain was noted a slight extravasation of blood—blood poured out into the tissues—a red spot. After the brain had been examined, then the cavity of the body was opened—1747 the chest—the lungs were examined and the heart. After most all the other organs had been examined, then the tongue and windpipe were removed and examined. Dr. Swinburne insisted upon the cutting of the throat ; he asked that it should be done. An incision was made ; there had already been an incision made below here, and the incision was continued on up underneath the chin and coming down to the windpipe ; it was then examined—the parts were thrown back ; then it was taken down and out, windpipe and all, dissected out. Externally, there was nothing to note abnormal about1748 the pipe through which the air passes from the mouth into the lungs ; the tongue was not swollen ; the peculiarity of its structure keeps this pipe open so it don't shut up when a man is alive ; it has cartilaginous rings ; it was all laid open and the inner surface exposed ; it contained only a little mucus ; the rings were natural, and there was no disturbance of them ; this was at the Spaulding House at the first autopsy. The tongue and so on were not returned ; the cut under the chin was brought together and filled with something ; I think it was the undertaker put it in ; something1749 was stuffed in ; I think cotton ; it was brought together and sewed ; I am not sure who did it, whether Dr. Delafield or the undertaker ; it was filled with cotton—the neck was.

The liver and spleen were examined, also the lungs and kidneys and the bladder and the guts ; they were examined their entire length ; they were

slit open, and every part carefully examined down through ; I think that includes all.

Q. Now, if there was anything you are able to describe by words here, in reference to the condition of any of these parts of either of these organs, that were unnatural or different from ordinary human beings, I wish you would mention it ? A. There might be rather more—there might some of them have been more filled with blood than perhaps you would find on some occasions.

Q. Than you did find on this occasion ? A. There might be—the spleen was not much enlarged and rather soft.

Q. You said there might have been more blood and mucus in one man than in another man ? A. No : there was nothing peculiar in Dwight's body in that.

Q. What do you say about that ? A. That some of the organs were a little more filled with blood than we see in some other bodies that are examined.

Q. I suppose the quantity of blood in a man depends some on his size and his condition at the time he dies, in regard to nourishment ? A. It makes some difference.

Q. Was there anything further or other that you can mention in reference to the condition of this man with reference to other dead bodies, except as it may be varied by a man's being large or small, thick or thin ? A. I don't remember in particular.

1752

*Cross-examination by Mr. Russell :*

Q. In making the examinations you made of Walton Dwight during life, could you have detected by auscultation or by percussion the existence of fibrous nodules in the lungs ? A. Not of that size—no.

Q. And still those fibrous nodules indicated previous pulmonary phthisis? A. I didn't say so.

Q. Did they not? A. I am not sure of it.

Q. Are you one of the doctors who doubt what you signed? A. I don't doubt what I signed; no, sir, I didn't state it.

Q. You doubt as to the truth of what you signed? 1753  
A. I didn't so state it.

Q. Do you mean to say you didn't sign the notes of this autopsy? A. Oh, no, I did sign them.

Q. Did you sign the notes which stated that these nodules were the remains of previous pulmonary phthisis? A. I signed the notes as they were taken; yes, sir.

Q. Didn't they state that according to your recollection of them? A. Yes.

Q. Then isn't my assertion true that these nodules indicate previous pulmonary phthisis? A. It was so stated in the paper.

Q. (Question repeated.) A. I don't know that it would be true. Fibrous nodules do not always mean pulmonary phthisis. 1754

Q. Isn't it true that these fibrous nodules in the body of Walton Dwight indicate previous pulmonary phthisis? A. Not necessarily.

Q. Do you mean they would naturally? A. They might indicate it.

Q. I didn't ask what they might have done; didn't it indicate to your mind the existence of that disease? A. I don't know.

Q. Then you didn't know what you signed? A. Yes, I knew what I signed. 1755

Q. Didn't you sign a statement that they did indicate this disease? A. I had nothing to say about the state of it at all; I signed the paper.

Q. You had something to do about it when you signed your name to it? A. Yes.

Q. Did you mean to sign a paper that didn't indicate what you truly thought upon the subject;

did you mean to sign a paper that lied about what you thought about it? A. I signed the paper—

Q. (Question repeated). A. I didn't mean to sign a paper that lied about what I thought; I didn't give much thought to it at that time.

1756 Q. If you didn't give much thought to it at that time, are you able to give more thought to it now after a lapse of five years? A. After considering the subject I can give more thought to it.

Q. Then you are able to give more thought to it and detail it more precisely now after the lapse of five years than you could at the time you saw the dead body before you? A. I have not said so.

Q. Is that what you mean? A. I could get to a better conclusion after examining the subject and after five years consideration than I could without any consideration.

Q. Than you could at that time? A. Yes.

1757 Q. Then at the time you signed these notes you knew that the statement there was, that these nodules indicated previous pulmonary phthisis? A. I knew the statement said so.

Q. Did you sign that endorsing that statement, or did you not? A. Well, without any thought, yes; without any thought on that particular point.

Q. You mean to say that your signature to this post-mortem was given without any thought? A. I didn't put any thought upon it.

Q. Was there any other thing you didn't put any thought upon? A. I thought of the—

1758 Q. (Question repeated.) I don't now remember.

Q. Were the notes read to you before you signed them? A. Yes, and I heard the whole.

Q. Did you make any objection? A. No.

Q. Was there any dissection made of those nodules? A. Yes; they were cut into. I saw the surface of the cut; it looked like what might be described as a gristle.

Q. Cartilaginous in its character. Do you mean that? A. Somewhat so.

Q. Like a cartilage—like a gristle? A. Hardish substance.

Q. Do you mean by a gristle, what we commonly call cartilage; is it the same substance—a gristle and a cartilage? A. I will say yes. 1759

Q. You mean to say there was a gristle, cartilaginous substance? A. A hard substance that was cut across.

Q. Do you mean to say there was a gristly cartilaginous substance in the apex of one of these lungs? A. It was on the surface; it was not imbedded in the tissue of the lung itself; it was on the top of the lung.

Q. It was on the surface of the top of the lung? A. Yes.

Q. Well, it extended below the surface of the lung? A. It would seem to grow out on the surface of the lung more like—raised up. 1760

Q. Did you make such an examination of that gristly substance you say was in those fibrous nodules, that you can say it did not extend below the surface of the lung? A. No.

Q. Was a post-mortem of that body complete, in regard to anything like diseases of the lungs, without a careful dissection of this gristly substance you speak of? A. I should not suppose it would be.

Q. You describe these nodules as Dr. Hyde did, as tumors? A. They seemed to be little bunches on the lungs. 1761

Q. Do you describe them as tumors? A. Something, yes.

Q. Now, in the examination of that body, you examined the heart, did you? A. Dr. Delafield did.

Q. Did you examine it? A. I looked on while he examined it, as the other gentlemen did.

Q. What were you there for? A. To look on.



Q. And try to find out something? A. To see what I could see.

Q. To reach any conclusion? A. I was there simply to look on.

Q. Were you there simply as a curious spectator or to find anything? A. I was there to be instructed and learn something.

Q. Were you there merely as a spectator or to see if you could not reach some conclusion? A. I was invited there to see the autopsy, and to see what conclusions were reached.

Q. You know better than to answer me in that way. Were you there for the purpose of making such examination yourself, so that you could, in your own mind, reach a conclusion? A. Perhaps so; yes, sir.

Q. Now, in that examination of that body, did you examine the heart? A. Yes.

Q. You did examine the heart? A. Yes.

Q. Did you find that heart healthy? A. It seemed to be.

Q. Did you find it so? A. I thought it was healthy.

Q. By that, you mean there was no evidence of disease to the naked eye; no disease discovered? A. Only, perhaps, in some of the valves there might have been some little change.

Q. That is not unusual, and nothing remarkable? A. No.

Q. Now, return to the lungs; you found the lungs congested, didn't you? A. In portions; yes.

Q. And what you call œdematous? A. It was so stated.

Q. And unduly inflated? A. It was so stated.

Q. Didn't you find they were? A. Yes.

Q. Are you able to tell why the air could not get out of those lungs? A. No.

Q. No examination was made that you know of to ascertain what it was that retained the air in the

lungs? A. They were divided across and examined very thoroughly.

Q. Was there any examination made at that time to satisfy your mind as to the cause of that undue inflation of the lungs? A. No, not especially.

Q. Was there generally? A. There were general sections made of the lungs, of all parts. 1765

Q. Was there any special or general examination of those lungs sufficient to satisfy your mind as to what caused that undue inflation of the lungs? A. No particular examination, no.

Q. Was there any general examination? A. There was a general examination made of both the lungs.

Q. Was there any examination of any kind, general, special, particular or otherwise sufficient to satisfy your mind as to the cause of the undue inflation of those lungs? A. I don't know how to answer you. I don't think I understand the question. 1766

Q. (Question repeated.) A. There was an examination to find any cause and all causes for death in the body. It was a general examination of the lungs.

Q. (Question repeated.) A. I will say no.

Q. Do you say the liver was healthy and normal in color? A. It was said to be, I believe.

Q. What do you say? A. Yes, it was.

Q. And the spleen was healthy and normal in color? A. I believe it was a little softer.

Q. Nothing unusual? A. No, nothing unusual, 1767 and healthy and natural in color.

Q. The stomach contained some food that was not wholly digested? A. It did.

Q. And the intestines contained a portion of the excrement? A. They did.

Q. And those two facts indicated that the process of digestion had been going on in that body at the time of death? A. To a limited extent.

Q. To the extent of an amount of digested and undigested matter found in the body? A. Yes; to an amount of both digested and undigested food in the body.

Q. Did you notice any old adhesions of the lungs on the autopsy? A. There were some adhesions, 1768 yes; I saw the adhesions.

Q. Were they old adhesions? A. I suppose they were; I don't know how long they had lasted or how long they had been there.

Q. Does your medical knowledge extend to the telling whether the adhesion is an old or new one? A. I might tell something about them, but I couldn't tell how long they had lasted.

Q. Can you tell from your medical skill and experience whether an adhesion of the lungs is an old one or a recent one? A. No.

Q. Then you don't consider yourself an expert on that? A. I am not an expert. 1769

Q. In any sense of the word? A. No.

Q. Then as far as your observation of this autopsy was concerned, your professional skill and knowledge did not afford much benefit to you in respect of indicating the cause of death or disease? A. It does, my observation and knowledge does.

Q. Is your observation and knowledge sufficient to enable you in making an autopsy to discover the cause of disease or death? A. In many cases; there are cases where it is impossible in an autopsy to give the cause of death from the autopsy.

Q. I am confining it to your knowledge—are you 1770 competent as a physician, to discover the cause of death or disease from an autopsy where there are any structural changes in the body itself which are sufficient to denote the cause of death? A. I think it is.

Q. Then I infer from your testimony that there were no structural changes in this body to your observation, which were sufficient to indicate the

cause of death? A. I did not see any. Pleurisy is an inflammation of the pleura.

Q. And what do adhesions indicate? A. They indicate that after this inflammation has existed, there is a fluid that is thrown out, and this becomes organized in a certain sense and forms these bands.

Q. Does it indicate the disease of pleurisy? A. 1771  
It indicates that the disease of pleurisy has existed; the pleura is the membrane that covers the walls of the lungs and also the chest.

Q. Can these adhesions be produced in any way than as the result of pleurisy? A. There must be an inflammation to produce it I suppose.

Q. I am talking about pleurisy; can they be produced in any way except by the disease called pleurisy? A. You must always get your exudation there.

Q. I want a direct answer? A. I do not suppose there can be; there must be a fluid thrown out. 1772

Q. And in case of an injury externally, which produced an inflammation of the pleura, it would be the injury that caused the pleurisy, wouldn't it? A. Yes, certainly.

Q. Then it would be the injury that caused the adhesions, but the injury caused the pleurisy, and the adhesion was caused by the pleurisy? A. Yes, that is correct.

Q. Isn't the pleurisy in connection with fibrous nodules in the lungs an indication of consumption? A. Not necessarily, no.

Q. Isn't it usually? Is there no connection between pleurisy and consumption? A. If you get 1773  
an inflammation with consumption it don't necessarily follow you must have consumption to have pleurisy.

Q. But if there is an inflammation with the consumption, then there is an intimate relation between the pleurisy and the consumption? A. Yes, it shows you have had an inflammation there.

Q. (Question repeated). A. If it extends to the pleura there may be a relation.

Q. Then granting that you find these adhesions and fibrous nodules of a gristly character indicating consumption and also adhesions of the lungs, would you not, as a medical man, draw a connection between the two things? A. If you had them all, perhaps it might be so.

Q. Wouldn't you, as a medical man, draw a connection between the two things? A. Well, yes, if you take them as a whole, I meant to be understood as having all these conditions, consumption and all.

Q. Didn't you find these fibrous nodules in the lungs of Walton Dwight? A. There were some nodules in the upper portion of one lung as I have described.

Q. And didn't you find the adhesions there too? A. In the pleura?

Q. Yes? A. There were slight adhesions.

Q. Why do you use the word slight? A. There were adhesions.

Q. There was no such word as slight, in the post-mortem notes. A. I don't remember just the term used.

Q. Does your professional skill extend to any personal knowledge of the indications afforded in a case of death caused by strangulation? A. Yes.

Q. Where the strangulation was caused by a rope? A. Yes.

Q. Was it a cause of suicide? A. I saw two cases, one of suicide and one where the man was hung by judicial hanging where there was a jerk to the body.

Q. In what position was the other, in what position was the body found? A. It was said to be on the knees.

Q. You did not observe the body when it was on its knees? A. No.



Q. In the latter case, what was the hanging caused by? A. By a rope.

Q. Of what size? A. It was a bed cord, perhaps the size of my little finger, perhaps half an inch.

Q. About how many pounds weight was it that caused death in that case? A. Only the weight of the body, I suppose.

1777

Q. Do you know? A. I don't know absolutely, no; two-thirds the weight of the body, most likely.

Q. I don't want probabilities, but I want the extent of your knowledge, if you have the means of knowing? A. I don't know.

Q. Do you know how long after death it was that you saw this body? A. He was found in the morning; I saw the autopsy, or rather I saw the body that day.

Q. You don't know how long the body had been hanging at the time it was discovered? A. I do not know from my own knowledge.

Q. Was there an autopsy in that case? A. There was; I stood by and looked on.

1778

Q. Who performed the autopsy? A. Dr. C. S. Burr.

Q. What was the name of the man? A. John Barnicle.

Q. Was that in the city of Binghamton in the year 1880? A. In 1879 I think it was.

Q. Are you familiar with cases of suicide by hanging, from reading? A. I am.

Q. About how many cases within your knowledge from reading? A. I have read of a great many.

1779

Q. Are you familiar with cases from reading where the hanging was accomplished in bed? A. I have read of such cases.

Q. Any by different kind of ropes or cords or fillets? A. I don't remember of many cases that I have read of where they were hung in bed or strangled in bed.

Q. But you remember some? A. I remember some.

Q. Do you remember any cases where the strangulation was accomplished by a towel or sheet. A. No.

1780 Q. You don't remember those cases? A. I don't remember any case accomplished by a towel or a sheet.

Q. Does your knowledge extend as to any indication, how slight a pressure may be sufficient to cut off respiration? A. No, only as I have read.

Q. Is your reading sufficient to enable you to give us an intelligent answer as to how slight a weight may be sufficient to accomplish that result? A. No, I don't think I know how slight a weight would produce it.

1781 Q. Don't you know from your own reading that the weight of the head and shoulders has been found sufficient to produce that result? A. I don't remember of any cases that I have read that answers to that description.

Q. Is it because of a lack of recollection or because you have not read fully on the subject? A. I have read considerably on the subject in various books of medical jurisprudence.

Q. Since when? A. All along for some time.

Q. Since when mostly? A. I have read within the past year and at the time this John Barnicle hung himself.

Q. Mostly since the death of Walton Dwight? A. Probably, yes.

1782 Q. Does your reading extend sufficiently to enable you to say whether the evidence of a rope or fillet would be less discernable upon the cartilaginous substance of the throat or upon the fleshy tissue? A. As a rule I should suppose it would be less upon the cartilaginous substance or show less.

Q. Does your reading extend so far as to produce the medical knowledge that it might not be discernable at all upon the cartilaginous substance of the

throat? A. I find that it most always does show some effects of the strangulation.

(Question repeated.) A. Yes.

Q. Why do you say in answer to my question, that it is most always so? A. Because in cases given, a majority of them show evidence.

Q. A majority of them? A. Great majority of them. 1783

Q. Then there is a minority of them which do not? A. It is so stated in the books that some show very little evidence.

Q. May not the furrow be altogether wanting, and there be a interruption in its mark, I ask you that question from your medical reading? A. I don't think it would be altogether absent.

Q. When you use the term you "don't think," do you mean you don't know? A. Not from my own knowledge, I don't know, that is from my own observation. 1784

Q. From reading—your knowledge of these two cases is not sufficient for our purpose—from your reading may not the mark be altogether wanting in places? A. I believe it is so stated in the books in some cases.

Q. And wouldn't, in any event, the mark be more clearly discernable and noticeable upon the fleshy tissue than anywhere else? A. Yes.

Q. You have been asked by the counsel as to whether you saw internal evidence on the wind-pipe, wasn't this mark above the wind pipe? A. Not all of it, no.

Q. What part of it was below the wind pipe? A. 1785  
On one side it commenced lower than on the other.

Q. What part of it was below the wind pipe? A. Why it come down here to the wind pipe also on the left side.

Q. Then on the left side the mark came down to the wind pipe? A. It came down on the side of the neck at a point to the wind pipe.

Q. And how near did the two marks meet? A. They didn't meet at all.

Q. How near did they meet? A. Well, they were about half or three-quarters of an inch.

Q. Half or three-quarters of an inch apart? A. Yes.

1786 Q. And how near did they come to meeting behind? A. Well, they didn't come perhaps within two inches of meeting behind.

Q. Perhaps within two inches or more from meeting behind? A. Yes.

Q. And do you say that it is your opinion that that mark was caused by the throwing of the head backwards after it had been elevated upon a rest? A. Yes, or no, would not explain my meaning.

Q. You can say whether in your opinion that was the cause? A. The crease was not caused by throwing the head backwards. It opened the fold by throwing the head backwards.

1787 Q. Do you say that the mark was caused in your judgment by putting the head forward—being elevated upon a rest? A. Yes.

Q. And do you say that in your opinion the mark simply extended to a depression in the skin? A. To a fold in the skin.

Q. To the skin itself? A. The fatty fold—portion of the neck.

Q. We don't know what you mean by that; do you say that the depression in that extended only to the skin—yes or no? A. No.

Q. The depression was below the skin in the fat of the neck, was it? A. It was the fatty portion of the neck and the skin that was folded.

1788 Q. Did that depression in the neck which was noted as a heavy indentation, extend below the skin itself and into the fatty tissue of the neck? A. I would like to explain.

Q. No, I don't want you to explain, we want facts and not explanations? A. Yes.

Q. And in order to ascertain the reasonableness,

I ask if that head had been elevated by a rest so as to drop the chin down upon the breast, would not the fold itself have been fully as noticeable and marked in front under the chin as it was on any other portion of the neck? A. Well, it was not in this case as a matter of fact.

Q. (Question repeated.) A. I did. I said it was 1789  
not folded under the chin as it was on the sides here.

Q. (Question repeated.) A. It is not a theory I advance. I am merely stating the conditions as they were.

Q. (Question repeated.) A. No, because there was a chin rest there that held the chin up; there was a chin rest as you have seen here in Court, that came underneath here.

Q. Would that chin rest have the slightest effect in altering the fold of the skin further on the chin towards the neck or in the neck where the chin rest didn't touch at all? A. It must decidedly— 1790  
holding the chin up in this way I should think it was two inches wide or an inch and a half wide, holding the tissues up here, would prevent this fold as the head was bent forward here.

Q. Did that chin rest cover any portion of the neck where the two ends of this indentation met? A. No, I don't think it did.

Q. Then if this chin rest did not cover any portion of the mark which you indicated, of this indentation, would not that indentation have been perceptibly noticeable if made by bending the head forward, independently of the chin rest? A. 1791  
Why it did not cover any portion of the indentation because the indentation didn't come down in the way of the chin rest; it didn't come down far enough.

Q. Did it extend far enough back in the neck to meet the line of that indentation if it had continued around the neck? A. The chin rest was here under the chin; it came up over the jaw.



Q. (Question repeated.) A. It didn't interfere with the indentation at all.

Q. (Question repeated.) A. I think not.

Q. Then would not that fold in the skin, as you call it, if it had been continued around the neck and caused by dropping the head forward, have  
 1792 been more marked and noticeable in front or fully as much so as it would any other portion of the neck? A. It did not come in front.

Q. (Question repeated.) A. I say no.

Q. Would it if there had been no chin rest there? A. Then the fold might have extended down if there had been no chin rest; it possibly might.

Q. If that fold has been produced by a stiffening of the skin or the tissues of the neck, in the position in which the head lay, would not that fold have been there if it was not covered by any chin rest? A. If it had been there at any time it would  
 1793 have remained.

Q. (Question repeated.) A. If it had been there it would not have changed, of course.

Q. (Question repeated.) A. I don't understand the question.

Q. Is it possible for you to answer that question? A. I don't get the meaning of your question.

Q. Is it possible for you to answer me? A. If he reads your question I will see, and will try and answer.

Q. (Question repeated.) A. It would have been there—yes.

Q. And still you say that the chin rest did not  
 1794 cover the line of it—why then has the chin rest anything to do with it, if it didn't cover the line of it, and if the chin rest had not been placed upon the head? A. Because the chin rest held the tissues up here, so they didn't fold upon themselves underneath here.

Q. What was the chin rest put on for? A. To hold the jaw up—to hold the mouth closed.

Q. Do you say it gathered any portion of the skin or flesh of that neck, except directly in the line of it? A. I don't suppose it did; it was underneath the thick, heavy neck here.

Q. Was there any drawing forward of the parts of the neck that would not have naturally been under that chin rest, as it then was upon the head? 1795

A. It would hold here under this fat portion of the neck, holding it up.

Q. It would rest directly under the chin, and from there to the crown of the head—wasn't that the line of it? A. Yes.

Q. Then the only possible theory, as I understand you, from which you say the fold—if it was a mere fold of the skin and the flesh—would not have been noticeable under the chin, was, because the chin rest might have drawn the flesh and skin forward—is that it? A. I don't know of any other reason.

Q. Now, how far was the back end of that chin rest, where it came on the neck, to the line of this indentation? Give me the number of inches, as far as you can recollect? A. I don't recollect how far it was. 1796

Q. Was it three inches? A. It could not have been so far as that; I don't know how far it was.

Q. About how far? A. I don't know how far it was.

Q. Give me your best recollection of the subject? A. It must have been very close; the chin rest was upon the chin here and this line (referring to line of the elastics) came down. 1797

Q. Give it in inches? A. It couldn't have been over an inch; I don't think so; I don't know just how far it was.

Q. How far was it where the line up to the crown of the head passed the indentation on the side of the neck? A. How far the line of the chin rest was from the indentation?

Q. Yes. A. The chin rest was upon the back portion of the head coming across.

Q. How far from the indentation was the line of the chin rest? A. It came near to it.

Q. About how far—I mean in the side of the neck? A. It might have been a half inch, or it may have been close to it.

1798

*The Court.*—Do you mean the line of the two elastics?

*Mr. Russell.*—Yes, that is what I mean.

*The Witness.*—Yes, the line of the two elastics, coming down.

Q. Did the line of the elastics go in front of the ears? A. I don't think I saw the chin rest on the head; it had been taken off.

Q. Then you don't know whether the line of the elastics was forward of the ear or not? A. I do not.

1799

Q. Would the mark of the indentation be more perceptible when the fold was there with the head forward or when it was thrown back? A. It was not perceptible—it was not noticed till the head rest was taken away and the head was thrown back.

Q. Then, you say, in your judgment, do you, that the fold was caused by placing of the head forward, the chin upon the breast, and yet that it was not so noticeable on the side of the neck as when the head was thrown upward like that—(indicating)? A. Yes.

1800

Q. Would not the stretching of the skin in throwing the head back from the elevated position that you state, make a fold in the skin which was caused by putting it forward, less noticeable than it was before; I want your statement? A. It opened the fold when the head was thrown back.

Q. (Question repeated.) A. It would make it more noticeable.

Q. You still say that the fold or indentation

would be more noticeable when the skin was stretched by throwing the head back than it would be when the fold was right there by the cause which produced it, do you? A. It was shut together—this indentation as it has been called—and when it was thrown back——

Q. (Question repeated.) Can you answer that question? A. I can. They were more noticeable when it was thrown back. 1801

Q. (Question repeated.) A. I say they were more noticeable when thrown back.

Q. Is that all the answer you can give to me? A. That is the true answer.

Q. Is that all the answer you can give? A. It was more noticeable when the head was thrown back.

Q. Is that all the answer you desire to give? A. Yes.

Q. Did you see the head when it was thrown forward? A. Yes. 1802

Q. While that head was thrown forward and after that body had been on ice forty-eight hours, neither you nor any one else to your knowledge, you say, noticed that indentation until the head was finally thrown back? A. That is my recollection.

Q. You have told us you could not tell what the line of the elastics of the chin rest was—did you add also that you didn't notice the chin rest upon the head? A. I didn't see the chin rest upon the head, I think; I did not.

Q. In treating of the chin rest you don't speak of anything from your personal knowledge whatever? A. Yes; I do; there was a mark here under the chin. 1803

Q. In speaking of the chin rest do you speak of your personal knowledge at all, as to the existence of the chin rest upon that head at all? A. Not by personal observation; I don't remember that I saw it on the head.

JOHN G. ORTON, called as a witness on behalf of the plaintiffs, and sworn, testified as follows :

*Examined by Mr. Smith :*

I am a physician and surgeon, and reside at  
 1804 Binghamton, New York ; have practiced my profession there for about thirty years ; I knew Walton Dwight from a period 15 years before he died, I think ; I met him frequently as a citizen of Binghamton, and also while he was a resident of Windsor, New-York ; I also met him in my way as a professional man.

Q. At how early a period, if ever, did you have  
 occasion to make a personal examination with the  
 view of ascertaining the physical healthfulness of  
 Dwight? A. I don't think I can state the precise  
 time, but it was probably within the past fifteen  
 1805 years—about fifteen years ; that occurred in Binghamton ; I made a thorough physical examination of Col. Dwight for the purpose of his effecting life insurance on himself—examining the chest, heart and lungs ; I found him to be perfectly healthy ; I made this investigation for somebody else ; it was for the Equitable Life Insurance Company of New-York. I examined him again in 1878, in Binghamton ; my best recollection is, that the first examination was about ten years previous ; this investigation in 1878 was in connection with life insurance ; it took place in Binghamton ; it was  
 1806 done by making what we call a physical examination of the chest, listening to the sounds of the heart, the respiration of the lungs, measurement of respiration, that is, measurement of the ability to inflate the lungs ; chemical and microscopic examination of the urine ; character of the pulse described.

Q. What was then ascertained to be the physical condition of this man ? A. That he was in perfect health ; I saw him afterwards.



Q. Are you able to state at what period your relation as a doctor or physician of Dwight commenced? A. I think it was about 10 or 12 years previous to his death; it may have been longer.

Q. Did you see anything of this man later than what you have already mentioned, that was, not as a physician, or as an attending physician, or as his physician? A. I did. 1807

Q. You have spoken of these two applications that you examined for insurance; are there any other occasions when you saw him otherwise than as a physician? A. I saw him as a citizen of Binghamton.

Q. On other occasions that you can identify? A. I examined him quite a number of times for life insurance; I think I am unable to state the number of times, but 10 or 12 times at least—most of them during the year 1878; I remember the circumstance of making an examination connected with the Germania Life Insurance Company; I think it was in August, 1878, and at the instance of Col. Dwight. 1808

Q. The question was first, at whose instance, and you answer Col. Dwight; now I propose to ask you whether there was any other moving cause? A. Mr. Hermans, the agent, who has been here, requested me to make it.

Q. Now, in making that examination, was there anything that occurred between you and Dwight in reference to his answers to be made to the statements to be made as to his physical condition? A. Necessarily so from the questions which I propounded to him. 1809

Q. Was there any conversation between you and Col. Dwight upon the subject of spitting blood?

Objected to as incompetent, irrelevant and immaterial.

The counsel for the plaintiffs produced at the call

of counsel for the defendants a paper purporting to be a medical examination of Walton Dwight made by this witness, which paper was thereupon introduced in evidence by the counsel for the defendants ; it was marked Exhibit No.112.

- 1810 I saw the body of Walton Dwight on the morning of the 18th of November, in the hall in the rear of the Spaulding House, the place which has been mentioned as that where the autopsy occurred At about 15 minutes past 9 o'clock in the morning I went in this hall in the rear of the Spaulding House and there saw the body of Walton Dwight lying upon boards ; the clothing was removed from the body ; at that time the body was upon the boards, the head was raised by something being placed upon the back of the head, keeping it raised up. After an inspection of the whole body both in front and behind, the scalp was removed by Dr. Delafield
- 1811 of New York ; the skull was sawn in two and the brain brought into view ; the parts were examined and their condition noted by dictation by Dr. Delafield to Dr. D. S. Burr, who wrote them down as dictated by Dr. Delafield ; the brain was removed from the skull and examined in its various parts ; the chest was then opened, exposing to view the lungs and heart ; those were examined in their various parts, and removed from the chest ; the abdomen was then opened and its various parts examined ; portions of the body were removed and placed in several jars and sealed and labelled as portions of the body of Walton Dwight ; that virtually
- 1812 ended the examination externally and internally ; there was a scar as the result of a gun shot wound upon the rear portion of the side—in the rear portion of the body ; on the posterior portion of the body there was noticed a discoloration, which is usually seen in dead bodies that remain lying upon the back ; upon removing the support to the head it was noticed—Dr. John Swinburne noticed a heavy

indentation extending upon the right upon what is called Adam's apple upwards and backwards at about the angle of 45 degrees to a similar one on the left, extending from the thyroid cartilage about an inch lower than the one upon the right, extending also upwards and backwards to an angle of about 45 degrees; my attention being called by this remark in reference to this indentation, I examined it, it being upon the left side of the body; I raised the head to the position in which it had formerly been raised by being propped up, and I observed the fold of the skin, and the immediate tissues below it assumed the form of a fold, which was brought into view, more particularly into view, by the head being thrown backwards; it could be distinguished when the head was thrown forward, but it was plainly to be seen, and much more plainly to be seen, when thrown backward. 1813

Q. How did these two unevennesses that you have described meet at the centre over the windpipe? 1814

A. They did not meet.

Q. Using your organs of recollection, so far as they are necessary to make answer to my question, state the distance? A. About one inch.

Q. Was there any unevenness of skin from one end of these ends in a line to the other end that you have mentioned? A. There was not; I examined it with my left fore finger, put it on, and passed it through the furrow on both sides, the right and the left; I examined all the parts of the neck as far as I could; I found nothing whatever approaching to the appearance or feel of parch- 1815  
ment.

Q. You know whether it was there or not, and that is what I want to know? A. I know it was not there.

Q. Now, was there any discoloration—a purple line more or less intense or dim across that?

Objected to on the ground that the

question was leading. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. There was not.

1816 Q. After these examinations were thus made, was there any suggestion from any one as to cutting his throat? A. There was; it was suggested by Dr. Swinburne that the tongue should be removed, and windpipe; Dr. Delafield did the cutting then; after the chest had already been opened a cut was made from that portion upward to the chin, and the parts were dissected out up to just below the forward end of the chin; the contiguous parts were dissected out and thrown backwards on each side; the tongue and windpipe were removed; I observed the condition of the windpipe; the rings appeared to be in their true normal condition; the passage  
1817 through the windpipe was not contracted in any part; this hole which was made was afterwards sewed up and filled with cotton; I don't know by whom; I made an examination of the lungs; I saw no cicatrices in them; there were none.

Q. Were there any nodules there? A. There were; in the upper portion of the right lung; they were three in number; each one of them was about one-fourth of an inch in diameter lying upon the outer surface of the lung and in front; Dr. Delafield dissected around them, separated them, and cut through them, or at least cut through one or two of them; they extended over a surface—that  
1818 is, the three—of about one inch; they were separated from each other.

Q. Have you got through describing them? A. I guess that is enough.

Q. I ask whether the description of a nodule, in conveying the idea of it, would be facilitated by saying it is very like a young wart?

Objected to on the ground that the

witness must himself describe the thing; the Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. It had the general appearance of a warty excrescence upon the outer surface of the lung. 1819

Q. Around those little spots what was the condition of the "tissues," I think they call it here?

A. It seemed from the dissection to be in as healthy a condition as any other portion of the lung.

Q. What do you mean? A. The space in between.

Q. (*By the Court.*) How much space was there between the nodules? Did they stand in a group?

A. Very much in the shape of a triangle.

Q. Did you look at the other interior organs carefully? A. I looked at them as they were removed from the body. The three nodules were included in a space of one inch; the nodules themselves were about one-fourth of an inch in diameter; an old-fashioned copper penny would cover all those nodules. 1820

*Cross-examination by Mr. Russell:*

I sent out invitations to attend this autopsy to Dr. Frederick Hyde, Dr. Chittenden, Dr. G. Post Jackson, Dr. Griffin, Dr. Richards, Dr. Brown and Dr. Comstock; I think that is all.

Q. You were the medical advisor of Walton Dwight in his family at that time? A. I was. 1821

Q. You were also agent of the Equitable Life Insurance Company? A. I acted as such.

Q. Now, in conducting this autopsy, did you participate at all? A. Only as a looker-on; I don't think I made any suggestions.

Q. Didn't you participate to the extent of signing the notes of the autopsy and assenting to them? A. I did.



Q. Was there any other medical adviser of Mr. Dwight that was present and assented? A. Dr. George Burr, now deceased, and Dr. Dan S. Burr.

1822 Q. In conducting that autopsy, was there anything done to the body, against which any of you medical advisers of Mr. Dwight and family protested? A. No.

Q. Not a thing? A. No.

Q. Then the cutting and opening and dissection of which the plaintiffs' counsel speaks, was done with you three gentlemen as participants assenting thereto? A. I think so.

Q. Was there anything unusual done at that autopsy by any doctor connected with it? A. I don't think of anything.

1823 Q. I suppose you received pay from the Equitable Life Insurance Company for your services as its agent? A. Yes.

Q. Did you get a brokerage fee or a commission fee for your services in procuring the insurance of Walton Dwight from the Equitable Life Insurance Company? A. I did.

Q. What was it, brokerage or commission fee? A. A commission; it was twenty per cent. on the premium; I really have forgotten the amount of the premium.

Q. About how much? A. I can't tell; I don't remember anything about it.

1824 Q. Wasn't it as much as \$300 or \$400? A. Why, no, of course not; it was paid on the quarterly premium.

Q. Didn't you receive a commission of 20 per cent. on what would have been the whole yearly premium? A. I never did.

Q. You never did? A. No.

Q. Then your commission was somewhere, was it not, in the neighborhood of between one and two hundred dollars? Don't you know how much you

got? A. I do not; it probably was in the neighborhood of \$100.

Q. In connection with this insurance, did you not get a medical examiner's fee? A. I did not examine him for the Equitable Life.

Q. I say in connection with this insurance of Walton Dwight, which he tried to effect in August and September, 1878, did you not also receive medical examiner's fees? A. From the different companies I examined him for, yes. 1825

Q. Did you, during any portion of September or October, 1878, receive compensation also from Mr. Walton Dwight for any services? A. None whatever.

Q. Have you ever made any charge? A. I never have made any charge of any kind.

Q. Against his estate for any services you rendered? A. Certainly I have against the estate.

Q. Have you received pay? A. I have not. 1826

Q. But you have made the charge against the estate? A. Yes, a charge against Walton Dwight.

Q. You say you have never received a commission on the other three-fourths of a year premium from the Equitable, or made a claim on the Equitable for it? A. I have.

Q. Then, as you sit there, you regard your claim against the Equitable Life Insurance Company for the commission on the other three-quarter premium as a valid claim? A. I am in doubt about its being a valid claim.

Q. Did you make a claim seriously against a life insurance company for a sum of money you are in doubt yourself about the justice of? A. No, I did not. 1827

Q. Then don't you regard it as a valid claim against the company? A. That is, I regarded it as a valid claim.

Q. You take back what you said, that you had doubts? A. It was subject to explanation.

Q. Don't you take back what you said a few minutes ago about your having doubts about the claim? A. I doubt whether I should be able to collect it, that was what was in my mind.

1828 Q. Your doubt is about your ability to collect it, and not about the legality of the claim? A. Yes, that is the point.

Q. That claim, if allowed, would be for \$300 or \$400 more? A. Not so much as that.

Q. If one-quarter would be about \$100 three-quarters would be about \$300? A. Yes, in that proportion.

Q. As you sit there, having a claim against the estate of Walton Dwight, don't you regard it as for your pecuniary interest to have these life insurance policies collected? A. Yes.

1829 Q. You do, and as you were present at that autopsy you were possessed of the same pecuniary interest? A. I can't say that that entered my mind at all.

Q. Did you not at the time of that autopsy feel that it was for your pecuniary interest that there should no cause of death be disclosed which would prevent the collection of those life insurance policies? A. I did not.

Q. At what period of time have you become possessed of that feeling of pecuniary interest which you now speak of? A. I can't say that there was any particular time. I was present at the autopsy, and was present at the post-mortem examination, both?

1830 Q. Have you acted in any way as an adviser to any one interested in the Dwight estate in regard to these litigations? A. I have not, in any manner whatsoever.

Q. Have you attended consultations of the doctors on the side of the plaintiff? A. No, we have not had any consultations, except so far as three of us have been lodging in the same room to sleep.

Q. Have you not, four of you, including yourself and Dr. Chittenden, had a consultation in regard to the medical testimony to be given upon this trial? A. In a general way we have, of course.

Q. Have you had consultation with the lawyers for the plaintiff too? A. No.

Q. Have you had consultations with Mr. Chapman? A. No. 1831

Q. Have you given him no information in regard to the evidence in this case? A. Not that I know of; not a particle; nor have I given any to Mr. Sessions, nor to Mr. Smith, no.

Q. Do you mean as an intelligent man to say that you were put upon the stand and gave your testimony without any of these lawyers knowing what you were going to testify to? A. I am not aware that they know.

Q. You never have had any personal communication with them upon the subject? A. No, none whatever. 1832

Q. And when they put you on the stand as a witness, not one of them knew a particle of testimony you were to give? A. No.

Q. When you arrived at the autopsy where was the body? A. It was in the hall in the rear of the Spaulding House Cottage, about 40 or 50 feet probably away from it; it was understood to be a dancing hall; as I understood it, it was the hall in which they were dancing on the night on which Walton Dwight died; this cottage and the hotel were connected by a hall or passageway; but otherwise they were three separate buildings, to all intents and purposes. The office of the hotel was on Chenango street; and the entrance to this hall in the rear of the cottage was on Lewis street, another and different street. 1833

Q. And about how far in rods, according to your recollection, according to the usual method of travel, was it from the entrance of the hall around to the office of the hotel? A. It may have been 50

or 60 feet from the hall where the autopsy was conducted to the office of the hotel; around through Chenango and Lewis streets, I should think it would be 150 feet at least.

1834 Q. The body, you say, was out of the ice casket at the time you first saw it on the day of the autopsy? A. I think it was.

Q. And was the head supported by any rest, throwing it forward, when you first saw it? A. Yes; I can't say what it was under the head, but it was something—some object that raised the head up.

Q. Did it throw the head forward enough so that his chin would touch the breast? A. I think it did.

Q. In making that autopsy and in handling was the head moved backward and forward several times? A. Yes.

1835 Q. Wouldn't that moving, in your judgment, backward and forward, tend to remove or soften anything like a fold in the skin? A. I think it would.

Q. And during that autopsy and during the second autopsy the head was also moved, was it not? A. Yes.

Q. Was it moved laterally and around? A. Yes.

Q. And yet when you first saw that body at the time of the autopsy, which was, I understand, the first time you saw it after Walton Dwight's death, and the last time you saw that body at the second post-mortem, wasn't that same indentation visible to your eyes? A. At the second autopsy I paid no attention to it whatever, and did not look at it.

1836 Q. But the first time you saw Walton Dwight after his death did you not see that indentation in his neck? A. I did.

Q. Doctor, wouldn't that indentation in the neck of Walton Dwight, had it been produced by a cord or rope, been more marked upon the fleshy part of



the neck than upon the cartilage? A. I think it, would.

Q. And if it was a mere fold in the skin, produced by the head being placed forward, wouldn't that mark be developed and more noticeable under the chin than any other portion? A. No; I think not.

1837

Q. Wouldn't the mark have been deeper when the chin rested on the breast underneath the chin, than when the chin rested on the neck? A. I think not; it was not, anyway.

Q. If that mark had been from a fold in the skin, wouldn't the indentation have been deeper under the chin than it would away up in the upper part of the neck? A. It wasn't in the upper part of the neck—deeper at the back part of the neck.

Q. If it had been so produced would it not have been? A. Well, I think not.

Q. Are you simply speaking from reasoning? A. Yes, that is all.

1838

Q. How near did those two ends of the indentation meet in the back part of the neck? A. I think it was two or three inches.

Q. And how near did they come to meeting in the front of the neck? A. About one inch.

Q. Now, if that mark had been produced by a cord above the larynx, which stopped the respiration, and was only sufficient for that purpose, do you say that necessarily there would have been any evidence whatever on the skin over the Adam's apple? A. I do say so.

Q. Do you say so from personal knowledge? A. No.

1839

Q. Do you say so from medical reading? A. No.

Q. Do you say so from hearsay? A. In this case I say it from personal examination.

Q. I am not speaking of this case, but I am speaking generally of a case? A. I speak from reasoning then.

Q. Is that reasoning based upon personal knowledge from a case of suicidal hanging? A. No.

Q. Is it from any evidence afforded by your own personal observation? A. No.

Q. Is it based from reading from medical authorities? A. No.

1840 Q. Is it based from hearsay? A. No.

Q. Then what is the basis; I do not mean the processes of your reasoning, but what basis has your reasoning to act upon? A. It is my own conclusions.

Q. And that conclusion is not drawn from personal observation, from medical reading, or from even hearsay, is that true? A. Yes.

Q. Are you familiar with the work known as Taylor's Principles and Practice of Medical Jurisprudence? A. I have read it; I can't say I am familiar with it.

1841 Q. Do you recognize it as a work of high authority in medical jurisprudence? A. It is considered so.

Q. Well, don't you learn from Taylor's Medical Jurisprudence that suicidal hanging may be produced by just sufficient weight, force or pressure to stop the respiration, and at the same time leave no visible mark upon the cartilage of the neck? A. I have no recollection of any such thing.

Q. Do you say it is not so? A. I don't say so.

1842 Q. Well, wouldn't it have assisted you, and would you not have been able to get a better understanding upon this subject to have based your reasoning in this case upon well known and recognized cases reported by medical authorities? A. Probably.

Q. In your judgment, would you have been able to form a better judgment on the subject by consulting and reading medical authorities and well known and recognized cases of suicidal hanging? A. Probably I should.

Q. You didn't do it, did you? A. No.

Q. In Mr. Smith's examination, you used the term furrow as applied to this indentation; did you use it by mistake or purposely? A. Purposely.

Q. And by furrow you mean a round groove in the neck? A. Not necessarily.

Q. Isn't that the ordinary designation of the term furrow? A. It need not necessarily be round; 1843  
I said a fold; I did not use the word furrow.

Q. Do you say you didn't use the word furrow in answer to Mr. Smith? A. I intended to use the word fold instead of furrow.

Q. Why do you use the word fold when the word heavy indentation was used in the notes you subscribed and assented to? A. Well, that was noted by Dr. Swinburne.

Q. Was there a single objection made to it by any living person upon the face of this earth at that time? A. None that I heard.

Q. Not even including yourself? A. No.

Q. Then, if you assented to the words "heavy indentation" then, why do you use the word "fold" now? A. I signed the paper assenting to the fact that Dr. Swinburne noted that. 1844

Q. Did you then believe and judge that that was not a heavy indentation? A. I did.

Q. Why didn't you raise a protest to the use of the term? A. I can't say that I have any reason for not doing it.

Q. And didn't you use the term fold because you see now how much more the term fold would apply and benefit one side of the case than the other? A. No, I can't say I do; I know I didn't. 1845

Q. When was it you first used the term fold in connection with this indentation? A. I don't know.

Q. When was it you first thought of it? A. I don't know.

Q. Wasn't it after the learned counsel had used the term fold in the trial of this case? A. I can't say.

Q. Can you say you ever thought of that term before Mr. Smith used it himself? A. I don't know.

Q. Well, in this indentation you concede that the tissue of the neck as well as that of the skin was involved? A. To a certain extent.

1846 Q. And was it above or below the Adam's apple? A. On the right side of it, it extended from the Adam's apple upward or backward, at about forty-five degrees, or it was so stated.

Q. Did the end of the right side come down above or below the Adam's apple? A. As I recollect, it was about on a line with the Adam's apple.

Q. How was the left side above or below it? A. That was below it.

Q. And you say about an inch apart? A. That is as I recollect it.

Q. This physical indication of that heavy indentation was the first thing that was observed externally or internally, was it not, about the body of Walton Dwight? A. I think it was.

Q. I ask you whether there was any evidence of any kind taken there, any sworn testimony? A. There was none that I heard of. There was none.

Q. Then the autopsy itself consisted simply of the dissection and examination of this body? A. That is all.

Q. At the time that that autopsy was made, did you know the extent of the effort that Walton Dwight had made to obtain an insurance upon his life? A. I knew he had obtained a large amount of insurance.

1848 Q. (Question repeated.) A. I knew he had made an effort.

Q. Did you then know the extent of the effort? A. I did not, in amount.

Q. Did you know that he had tried to obtain life insurance to the amount of three hundred and ninety thousand dollars? A. I did not.

Q. Did you know at that time that you partici-

pated in that autopsy that Walton Dwight had no means of his own to pay for premiums? A. I did not.

Q. Did you know that he was a bankrupt? A. No, I did not.

Q. In making the external autopsy of that body did you or did you not, observe ecchymosed spots on the back portion of the right arm? A. I think I noticed several small ecchymosed spots on those places indicated. 1849

Q. Did you mention those when Mr. Smith asked you to give what you noted externally about the body? A. I intended to include it.

Q. Did you do it? A. I don't know whether I did or not.

Q. Did you omit mentioning the existence of those spots purposely or by carelessness? A. It must have been by carelessness that I omitted to mention it.

Q. Did you do it on purpose or through inadvertence? A. Through inadvertence. 1850

Q. In examining the internal portion of the body, did you notice that the lungs were unduly inflated? A. I did.

Q. Did you omit to mention that fact in answer to Mr. Smith's questions as to what you saw in that body? A. I think I did.

Q. Did you omit that, also, through purpose or inadvertence? A. Through inadvertence.

Q. On that examination, did you find, in the left pleural cavity, old adhesions? A. Yes.

Q. Did you omit to mention that fact, also, in answer to Mr. Smith's question? A. I believe I did. 1851

Q. Did you do that through purpose or through inadvertence? A. Inadvertence.

Q. Did you find the bronchi congested and coated with mucus, the upper lobe congested and œdematous, and the lower lobe still more congested and œdematous? A. Yes.



Q. Did you omit to mention this circumstance, also? A. I think I did.

Q. Was that also through inadvertence? A. I think it was.

Q. Did you find that the bronchi in the right lung were congested and coated with mucus? A.

1852 Yes.

Q. And did you omit to mention that through inadvertence, also? A. Yes.

Q. Did you also find that the stomach contained portions of food partly digested, and in the intestines, portions of excrement of digested food? A. Yes.

Q. Did you omit this fact, also, through inadvertence? A. Yes.

Q. Did you find the epiglottis and larynx, and trachea congested and coated with mucus? A. I believe they were.

1853 Q. In that investigation, did you find the stomach—at the fundus—mucous membrane softened and partly destroyed by post-mortem changes; the pyloric end of the stomach—mucous membrane studded with small white spots, denoting chronic gastritis? A. Yes.

Q. You omitted to tell the jury that in your examination, did you not? A. I did.

Q. Also through inadvertence? A. Through inadvertence and not supposing I was to describe all of these parts.

1854 Q. Did you understand, from Mr. Smith's question, when he asked you to describe what you saw in that body, that he wanted you to tell the part that was favorable to his side and leave out the part that was not? A. No.

Q. Did you infer from his questions that you were desired to give a part of the appearance and leave out the rest? A. No.

Q. Well, what did you understand? A. I did not understand Mr. Smith, in his questions to me,

asked me, or expected me, to describe the post-mortem appearance of the whole body.

Q. Well, what on earth did you suppose he did ask you? A. He merely asked what was done, that is the way I understood it. And different portions of the body were opened, and I never attempted to describe what was said. 1855

Q. And didn't you understand Mr. Smith to ask you to tell what you found inside of the body? A. No; not the post-mortem appearances.

Q. Nothing of that kind? A. No.

Q. And didn't you go and tell him about what you found in the lungs? A. I think I mentioned the matter of nodules.

Q. And wasn't that in answer to Mr. Smith's question as to what you found inside of the body? A. That would be one of them.

Q. Then, if that was your understanding of Mr. Smith's question, why did you repeatedly tell me you left out these indications through inadvertence? A. I should regard that as an inadvertence, if I didn't understand the question properly; it was inadvertence not to answer the whole question. 1856

Q. And you mean your own inadvertence, didn't you? A. Of course.

Q. You don't throw the responsibility on Mr. Smith? A. It was my own fault, of course.

Q. Did you also note in that body that the liver and spleen were healthy, normal in color, excepting that the spleen was a little soft in consistence. A. That was so noted in the notes. 1857

Q. Did you also note that all of the organs of the body appeared to be healthy? A. Yes.

Q. Did you also note in that post-mortem examination that the heart was empty, with the exception of perhaps a half ounce of fluid blood? A. Yes.

Q. Were not the kidneys congested? A. I believe they were.

Q. Was the liver congested? A. Somewhat.

Q. Were the lungs congested? A. They were.

Q. Were they not engorged? A. They were congested.

Q. (Question repeated.) A. To a certain extent they were.

1858 Q. Can you take the adipose tissue of the neck and make a fold in it that will stay? A. That would depend on whether very cold or not, I think.

Q. Can you make a fold in the adipose tissue of the neck when it is cold or warm that will stay when the body becomes warm again? A. I think it would stay there for a time.

Q. But it would soon pass away, wouldn't it? A. It would depend upon the thickness of the adipose tissue.

Q. It would depend upon the thickness of the fold and the degree of force necessary to make it? A. Yes, that would have a good deal to do with it.

1859 Q. Without any force being applied to make a fold more than an ordinary and natural movement, is it, in your judgment, possible to make a fold in the neck that would last for five months? A. It might be so, it would be perceptible, but not to remain in the same condition in which it was first made.

Q. I am asking now for your deliberate judgment as a witness; is it possible to make a fold in the neck by the mere natural movement, and not by compression, that would last in the adipose tissue of the neck for five months so as to be discernable?

1860 A. Yes, I think it could be.

Q. Wouldn't it require considerable force to do it? A. I don't think it would.

Q. You don't think it would? A. No.

Q. Do you think that could be done by any natural movement? A. I do.

Q. And do you think so from any natural experiment that you made? A. No.

Q. Do you think so from reading simply? A. No.

Q. Do you think so from any personal knowledge? A. No, it is my own personal judgment.

Q. And not from personal knowledge? A. No.

Q. Is it not true that ordinarily the adipose tissue would not move or fold with the skin, but if there is a fold in the skin there would not be a corresponding fold in the adipose tissue beneath? A. That would depend upon the thickness. 1861

Q. I ask you ordinarily would it not be so? A. I think it would.

Q. Is it true that any of the interlineations were made as the autopsy went on—as the notes were being made and as the autopsy went on—to your knowledge? A. I have no knowledge whatever about it.

Q. Did you see a single interlineation made in these post-mortem notes while the notes were being taken, or did you hear a single direction by Dr. Delafield or anybody else to change the verbiage of the notes? A. I did. 1862

Q. At what time? A. The direction of Dr. Delafield in reference to the changing of the word “cicatrices” to that of “nodules.”

Q. Was there any other? A. I heard of none there.

Q. And was that direction not given after the autopsy had been actually finished and just prior to the signing of the notes? A. As I recollect it, it was given as it was being read over the last time.

Q. That was the only alteration that you knew of or heard of during the progress of that autopsy, was it not? A. Yes. 1863

*Re-direct-examination by Mr. Smith;*

Q. Have you any idea that you remember all that was said and done in connection with that paper? A. I have not. Adipose tissue is the fatty

material underneath the skin, beneath the true skin; first then is the scarf skin, then the true skin, and then this adipose tissue; taking the face of a man's hand, the first thing you come to is the scarf skin, the next is the real skin, and the next is the adipose tissue.

1864 Q. And if you bend it forward it forms an indentation and crease? A. Yes.

Q. And if you straighten it up? A. It becomes straight and smooth.

Q. And the line of indentation is visible, is it not? A. Yes.

*Re-cross-examination by Mr. Russell:*

Q. Is it not true that the skin slides over this adipose tissue, moves over it? A. In many cases it does.

1865 Q. Is it not ordinarily so; can't you move the skin right over this adipose tissue? A. Yes.

Q. Was not Dwight's neck pretty thickly covered with adipose tissue? A. It was.

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CHARLES D. RICHARDS, called as a witness on behalf of the plaintiffs, and sworn, testified as follows:

*Examined by Mr. Smith:*

1866 At about the time of the death of Walton Dwight I was one of the coroners of the county in which I lived, in Broome County; the first official connection I had with the dead body of Walton Dwight was when I caused it to be exhumed, dug up; before the body was dug up I had summoned a jury, composed of William Bassett, C. B. Spencer, Charles G. Estabrook, C. C. Edwards, A. W. K. Andrews, and Walter A. Brooks, as I remember;



they were all doctors ; I am a doctor ; I selected them ; they assembled at the cemetery at Binghamton, Spring Forest Cemetery ; a second post-mortem was made on the body ; the chest and abdomen were re-opened ; the contents, as I remember, were removed ; the body was turned over on its back and the bones of the back cut open and the spinal cord exposed ; the left thigh, I think it was, was laid open in the track of a gun-shot wound, or what appeared to have been that ; the bone was examined as to whether there was a fracture ; the neck was inspected by the jury and some of the other persons present ; a cast was attempted to be made, and various things that I can't remember the details of. There was an examination of witnesses after this, and before this jury ; I determined the selection of the witnesses with the concurrence of the jury. 1867

Q. Do you recognize among the gentlemen that have appeared here as witnesses any of the gentlemen who were there at that time ? A. I do ; Dr. Orton for one ; Dr. D. S. Burr, Dr. Ayer, Dr. Swinburne, Dr. Sherman, Dr. Bridges ; and there may be others that I do not now recall to mind. 1868

Q. D. Magone ? A. He was not sworn, I believe, Mr. Smith ; these gentlemen who have been witnesses here were examined ; the inquiry continued, including the examination of the body and the examination of witnesses and other proceedings pertaining to this inquest, my recollection is, about seven days ; minutes of the proceedings were taken ; I do not know whether they have been preserved or not. 1869

Q. Was there a decision by the jury, a verdict ?

Objected to as immaterial and incompetent.

A. Yes. It was committed to writing ; I have it. (Produced.) (Paper handed witness.) This paper

- was delivered to me at that time and it has been kept by me since ; I am a practitioner of medicine and surgery ; have occupied that profession for thirty years ; I saw Col. Dwight's body so as to examine it and be able to speak from experience before it was taken out of the grave ; I saw it at the dancing hall at the Spaulding House in Binghamton on the 18th November, 1878. I arrived at this place where the body lay about half after nine o'clock on that day ; the body was surrounded by a number of medical men ; Dr. Delafield was just about in the act of turning it over ; I looked at the body, and finally the body was returned over on its back again, when Dr. Delafield commenced to make an autopsy. I noticed on the right shoulder I think, and on the arm some ecchymosed spots ; my attention was called to a—
- 1870 well I hardly know what to say about that—
- 1871 whether it was a groove or what it is.

Q. I excluded "neck" in my question ? A. A scar on one of the thighs evidently some wound—the evidence of a former wound—nothing further that I could speak of but what would be likely to be found on the body of any person.

*Mr. Russell.*—I object to the answer, "nothing further that I could speak of," etc.

*The Court.*—It may stand, I don't understand that aside from the neck there were any exterior things or appearances that are in dispute, are there ?

- 1872 *Mr. Russell.*—I don't care to suggest anything.

*The Court.*—It don't occur to me just now.

Q. Will you not describe a little more what those spots were ? A. Those were little brown spots evidently just under the skin here (indicating,) I think right on this shoulder.

Q. Was it a place where the body had rested on the board ? A. I should say it was above ; the

spots were of different sizes ; some of them as large as the head of a common pin and some of them larger. I saw a couple of creases on each side of the neck extending from Adam's apple back—upwards and backwards ; on one side of the neck it was a little lower than on the other ; there was one crease on each side ; the ends in front were about an inch or an inch and a half apart from each other ; the one on the right side it seems to me was the highest ; I will not be positive about that ; these ran backward and upward. 1873

Q. Can you describe them to the jury ? A. No.

Q. Did they have any half round back side to either of them ? A. I didn't notice it.

Q. Can you tell whether there was any such thing there or not ? A. No, sir, I was not near enough.

Q. You didn't feel of them ? A. No.

I know the room where the body of Dwight was said to have been when he died ; the door from the sitting room opening into the bedroom swung to the left hand as you entered. The jury viewed the spot, and the coroner did also. 1874

*Cross-examination by Mr. Russell :*

Q. Do I understand you to say you did not particularly participate in the first autopsy that was made ? A. So far as the examination was concerned, I did not.

Q. Then you are not competent, according to your own understanding, to give any accurate or intelligent description of the neck ? A. No, I cannot. 1875

Q. By whom were you invited to be present at the first autopsy ? A. Dr. Orton ; I was a coroner at that time.

Q. Are you able to give us a careful and intelligent description of the state of the internal organs ?

A. Perhaps not entirely accurate ; I will endeavor to do so, if it is your pleasure.

Q. I am trying to ascertain first, whether you have sufficient knowledge upon the subject? A. I gave it a pretty tolerable good examination.

1876 Q. Then, what do you mean by stating that you do not know that you can give an accurate description? A. Memory, perhaps.

Q. Memory is somewhat at fault? A. Yes.

Q. Did you sign the notes of the first autopsy? A. Yes.

Q. Without protest or objection? A. Yes.

Q. You, as I understand, conducted the second examination yourself? A. I acted as coroner.

Q. Did you, at Binghamton, at or about the time of that investigation, or shortly prior, state in the presence of Mr. Magone and Dr. Swinburne, that you thought the death was a natural one? A. I don't remember any such conversation.

1877 Q. Did you make, at the second post-mortem, any more careful and thorough examination than you did at the first one? A. I think not.

Q. Did you then make any more careful or thorough examination of the neck? A. No, I did not.

Q. Did you intend to subpoena and examine all of the witnesses who were present at the time of Walton Dwight's death? A. Yes, I think so.

Q. Was James Lee subpoenaed, or was he a witness on that inquest? A. He was not.

Q. Were you advised by any one from any quarter that James Lee knew anything about the matter? A. I was not.

1878 Q. Was Warren F. Spaulding, the hotel keeper, examined as a witness? A. He was.

Q. Is he present here? A. I think not.

Q. Spaulding was examined as a witness at that inquest? A. He was.

Q. No one asked any questions upon that inquest

except yourself and the coroner's jury, the doctors?

A. No.

Q. That you say was a jury of six doctors? A. Yes ; there was no layman on the jury at all.

1879

BESSIE D. McDONALD, called as a witness on behalf of the plaintiffs, and sworn testified as follows :

*Examined by Mr. Newton :*

Walton Dwight was a brother of mine ; my age is twenty-nine years ; I was often with him during his life and often saw him. My brother was seventeen years older than I. He was away when I was a young child. After that I saw him from time to time excepting when I was away to school. I think I was about eight years old at the time my father's family removed to the city of Binghamton ; from that time on I was in Binghamton all the time until his death with the exception of two years I was away at school. I was married in 1873. Prior to that, at Binghamton, I resided with my mother and father, and during that time I was in the habit of seeing Walton nearly every day, I should think. I saw Mr. Dwight during his last sickness. I saw him once or twice before Mrs. Dwight came over, and after that I think I saw him nearly every day or two. When I first saw him during that sickness I didn't think him very sick ; he didn't appear like a person that was ; he was up and around his room and went out once after he came home from New

1880

1881



York. I did not notice whether he ate anything while I was there. I was usually in in the morning or afternoon, I was not there at all at meal time. I saw him vomit two or three different times when I was there during the time of his sickness; but not to vomit any large quantity. I was there  
 1882 on the second Saturday before his death, before he died Friday. Mrs. Dwight sent for me in the morning on the second Saturday before his death. I think it was between eight and nine that I went over. When I got there Dr. George Burr and Mrs. Dwight and Mrs. Charles Sears were there. Mrs. Sears is dead. There were several ladies, Mrs. Seaver went over with me; Dr. Orton and Dr. Dan Burr came in during the day, and Dr. George Burr was there during the day most of the time. Dr. George Burr is dead. When I got there Mr. Dwight was in bed in this bedroom spoken of.

1883 When I got over there in the morning he was in bed and was partly bolstered up and was having a severe chill, and was shaking, and his teeth were chattering, and he seemed very cold, and I went in and he spoke to me when I got to the bed, not when I first went in, and he said he thought he was——

The counsel for the defendents in due season objected to the witness testifying on the subject of what was said, as incompetent. The Court overruled the objection, to which ruling the counsel for defendants duly excepted.

1884

He said he was pretty sick and I noticed he was having——

The counsel for the defendants moved the Court to strike out this evidence as incompetent, and also on the ground that being the declaration of the deceased

it is not admissible as evidence against these defendants. The Court denied the motion to which ruling the counsel for the defendants duly excepted.

He was having a shaking chill when I went in and his flesh was very cold, his hands and feet, and the blood had settled under his nails, and I think this chill lasted from I should say one to two hours, fully as long as that, and after the chill was over he seemed very much prostrated, and cold drops of sweat come out on his face and hands and limbs, and his skin was clammy and moist. During that time he was rubbed with brandy, and hot applications put on and hot bottles put to his feet. Dr. George Burr was there most of the time during the day; he went out once after Dr. Orton, once was the only time. I wasn't in the room all the time the doctors were there; I was in the room once or twice when Dr. Burr was there, but not all the time—the room was very small; he was not up at all during that day before I left. I left, I think, about four o'clock in the afternoon; when I left he was more comfortable, and was beginning to get warm. I was there the following week several times, and I think nearly every day after that: at that time he seemed very much prostrated after the chill, and looked much worse, and had a haggard look that I hadn't noticed before. I saw his body after he was dead. I never saw him spit blood.

*Cross-examination by Mr. Russell:*

I am a half-sister of Walton Dwight; we had the same father. I first began to have an acquaintance with Walton Dwight when I was a young girl, and all during my girlhood; I saw him more after I was out of school and when I was older; that was in 1870 and 1871.

Q. From that time onward you saw more of him and knew more of him than previously? A. For three or four years previous to my leaving Binghamton I saw him as often as after, and during the two years I was away I saw little of him, of course, and after that I saw him nearly every day, and I was often at his house and he was at my house before my marriage and after. I went to school in 1869, and came back from school in 1871; and I was married in 1873, and from that time onward until his death in 1878 I lived in the same city. I don't know that he was away from Binghamton frequently; he was away sometimes; I don't remember where he was.

1888

Q. Do you know of his being away for weeks and months at a time? A. I can't say months; I might say weeks; a week or two or three; I don't know whether he was away for months at a time or not.

1889

Q. When was it that you first learned that Mr. Dwight was sick in the fall of 1878? A. A day or two after he came back from New-York, and I think it was the same day he came back. I can't tell the date; some time in October.

Q. And the time when you speak of his having a chill, was within one day of two weeks prior to his death, if I understand you? A. I think about that time; about two weeks before. I think it was the second Saturday before, which would be just thirteen days; I don't know that I have any data by which I can fix the precise day that I saw the chill.

1890

Q. When the counsel asked you if it was the second Saturday before, what reason had you for locating it on that day?

A. The week my brother died I was sick and I didn't see him after Tuesday, and I know it was a week before that, the week from that Saturday, that he was sick, and that is the only way that I can remember it, and the week from the following

Tuesday after he had the chill I was sick and was not able to see him ; I know it was Saturday, but I can't state the exact date of the month ; I am sure it was Saturday. I went there between eight and nine in the morning. I was there until three or four in the afternoon, and I should say four. I have described to the counsel all of the symptoms that I observed in Mr. Dwight, that I remember. 1891  
All that made any impression upon my mind ; he had no fever that day ; and all the sweat that I saw was drops of sweat, it was a clammy, cold sweat of the skin. Of course the skin felt damp and cold ; it was moist when the drops of sweat were on it, and it was cold at that same time.

Q. Then it was moist and cold at the same time—is that true ? A. Yes ; I think it was.

Q. Then if you noticed no other physical symptom about him, except what you have detailed, you did not notice anything unusual about his breathing, did you ? A. I don't remember anything about his breathing. He was very much exhausted and he seemed very much prostrated. 1892

Q. I did not ask about that, but if you wish to state it, I will give you an opportunity of doing so. I merely asked if you noticed his breathing ? A. I did not.

Q. You say he seemed prostrated ; be kind enough to tell me any physical indication that manifested prostration ? A. It was very hard for him to talk and he talked with a great effort.

Q. That is, he seemed to do so ? A. Yes.

Q. Anything else that indicated prostration, except his effort to talk ? A. He was very weak and very much exhausted. 1893

Q. Can you tell any other physical indication ? A. I don't think I can.

Q. You say he made considerable effort to talk, or seemed to, did the muscles of his mouth or those of his jaws seem weak and unable to articul-

ate? A. He had a drawn, pinched look about the mouth.

Q. Did his chin seem weak and unable to move freely? A. I don't know that I can say that it did.

1894 Q. Then it was not particularly the exterior part of his face that indicated the weakness of utterance, but merely the tone of voice? A. I think it was both.

Q. Did you notice any weakness of his chin? A. His voice was very weak. I don't remember that it seemed difficult for him to move his under jaw or chin; his voice was not very high, and more like a whisper.

Q. Did he speak above a whisper? A. I can't tell, for I don't remember.

1895 Q. About what time of day was it that you first noticed any symptoms of chill or shaking? A. He was shaking when I first entered the room between eight and nine o'clock; I think the chill lasted about two hours and closed then about eleven o'clock.

Q. And from that time until between three and four as long as you stayed there, you saw no symptoms of fever? A. I don't remember of any.

1896 Q. If you saw no other physical indication about him at the time of this chill, that you remember, you did not see him vomit, did you? A. No; I did not see him vomit the day of the chill. I think Dr. Burr gave him medicine that day. I do not know what it was; I couldn't tell whether it was in the shape of a powder, or liquid; I saw Dr. Burr have medicine, and administer it; I couldn't tell that it was a powder for I don't remember; I couldn't tell at what time of the day it was when I saw him administer medicine, I did not hear Dr. Burr say anything about giving him gelseminum.

Q. You spoke of his flesh, his hands and feet being cold; was that knowledge of yours derived



from what he said? A. No; I rubbed his hands during the day and put hot things to his feet I helped to put on hot mustard cloths and hot bottles to his feet, and rubbed his hands and arms with brandy.

Q. At the time that you saw him vomit two or three times, during your various visits, do you know whether they had been administering to him any doses of medicine? A. I do not. 1897

Q. Then you do not know of your own knowledge what caused him to vomit? A. No.

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The counsel for the plaintiffs then proceeded to read the deposition of ENCIE HERDIC, taken on behalf of the defendants at Williamsport, Pennsylvania, under order and commission of which the following are copies :

1898

#### SUPREME COURT.

ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
as Executrix and Executors of  
the last Will and Testament of  
WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

1899

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An order having been heretofore made by me founded upon the pleadings and the affidavit of Cornelius Doremus, requiring the plaintiff to show cause why a commission should not issue to examine Mellicant V. Coleman, wife of Fletcher

- Coleman, Horace E. Taylor and Harriet Taylor his wife, and Encie Herdic, wife of Peter Herdic, residing at Williamsport, in the State of Pennsylvania, and Hoppes, wife of George Hoppes, who resides at Bethlehem, in the State of Pennsylvania, and Julia Spackman, widow of the Rev.
- 1900 Henry Spackman, who resides at or near Dingman's Ferry, in the State of Pennsylvania, as witnesses in this action on behalf of the defendants, which said order was returnable before me this day at my Chambers, in the village of Norwich, N. Y., which order and affidavit with proof of service having been presented on behalf of the defendants, and the letter of the defendants' attorneys of May 11, 1883, to the plaintiffs' counsel; proposed stipulation on part of defendants' attorneys for a commission, stipulation putting cause over the November Circuit, 1882, affidavits and order postponing trial of case at May Circuit, May, 1883;
- 1901 and the affidavits of Henry Smith and George L. Sessions having been read on the part of the plaintiffs; now on motion of H. G. Prindle, of counsel for the defendants, and after hearing Henry Smith, Esq., counsel for the plaintiffs, and upon consent of the said counsel for the respective parties, ordered, that an open commission issue to Robert A. Stanton, Esq., of Norwich, N. Y., counsellor at law, to take the evidence of the said Mellicant V. Coleman, Horace E. Taylor, Harriet Taylor, Encie Herdic, Hoppes, wife of George Hoppes, and Julia Spackman, as
- 1902 witnesses on behalf of the defendants: that the examination of the defendants' witnesses, commence on the fourteenth day of August, 1883, at ten, A. M., at the Park Hotel, at Williamsport, in the State of Pennsylvania; and the examination continue at such places in the State of Pennsylvania, as the said commissioner may appoint, until the eighteenth day of August, 1883, at ten P. M.; that said commissioner shall take such evidence as

may be offered by the plaintiffs of witnesses residing in said State of Pennsylvania during five consecutive days at such places in Pennsylvania as said commissioner may direct, upon said plaintiffs giving defendants six days' notice of the time when, and place where, such examination shall commence. This order is granted upon the following conditions: That the fees of said commissioner, which are fixed at twenty-five dollars per day and his expenses, shall be paid by the defendants, and in case the defendants succeed in the action, the amount so paid shall be taxed and allowed to the defendants as part of the costs of the action; that the trial of this action be postponed to the twelfth day of November, 1883, at a Circuit Court appointed to be held on that day at the village of Norwich, in the county of Chenango; and it is further ordered, that the evidence taken by said commissioner shall be filed by him with the clerk of said county of Chenango, on or before the first day of October, 1883.

1903

1904

Dated Norwich, N. Y., August 6th, 1883.

DAVID L. FOLLETT,  
*Justice Supreme Court.*

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*The People of the State of New-York. To Robert A. Stanton, Esq., of Norwich, New-York:*

Know ye that we with full faith in your prudence and competency have appointed you commissioner and by these presents do authorize and direct you, Robert A. Stanton to take the evidence of Mellicent V. Coleman wife of Fletcher Coleman, Horace E. Taylor and Harriet Taylor, his wife, and Encie Herdick wife of Peter Herdick all of whom reside at Williamsport in the State of Pennsylvania, and Hoppes, wife of George Hoppes, who resides

1905

- at Bethlehem in the State of Pennsylvania, and Julia Spackman, widow of the Rev. Henry Spackman, who reside at or near Dingmans Ferry in the State of Pennsylvania, witnesses to be produced on the part of the defendant in an action pending in the Supreme Court of the State of New-York, wherein
- 1906 Anna Dwight, Orlow W. Chapman and George F. Lyon as executrix and executors of the last will and testament of Walton Dwight, deceased, are plaintiffs and the Germania Life Insurance Company is defendant, on the part of the defendant upon oath upon oral questions to be put to the said witnesses when produced ; that the examination of the defendants' said witnesses shall commence on the 14th day of August, 1883, at ten o'clock A. M. at the Park Hotel at Williamsport in the State of Pennsylvania, and that the examination of said witnesses continue at such places in the State of Pennsylvania as you the said commissioner may appoint
- 1907 until the 18th day of August, 1883, at ten o'clock P. M. unless sooner concluded. That you, said commissioner, shall also take such evidence as may be offered by the plaintiff of witnesses residing in said State of Pennsylvania during five consecutive days at such places in Pennsylvania as you may direct, upon said plaintiffs giving defendants six days' notice of the time when, and place where, such examination shall commence, that you take and certify the evidence so taken before you and file the same with the Clerk of the county of Chenango on or before the
- 1908 1st day of October, 1883, together with the commission according to the directions given in or with the commission and hereto annexed.

Witness Hon. David L. Follett one  
of the Justices of the Supreme Court  
of the State of New-York the 6th  
day August, 1883.

W. MERRIFIELD.  
*Dep. Clerk Chenango County.*

## DEPOSITION OF ENCIE HERDIC.

Q. (*By Mr. Barlow.*) What is your name, age, residence and occupation? A. My name is Encie Herdic; my residence is here at present; and my age is —

Q. Do you know the parties plaintiff in this action? A. I know Mrs. Dwight; none of the others. 1909

Q. Were you acquainted with Walton Dwight, at any time during his life, and if so when and where did you first make his acquaintance? A. In Williamsport, in 1865, in what was then the Herdic House.

Q. Did you during any of the time that Mr. and Mrs. Dwight were living at the Herdic House, live also there? A. I did not.

Q. Do you know what rooms Mr. and Mrs. Dwight occupied at the Herdic House? A. I do not remember. 1910

Q. Did you visit them or either of them in such rooms, and if so, when, and about how frequently? A. I visited them very often, but I cannot say how frequently.

Q. Please state, whether or not, the said Walton Dwight was ill or confined to his bed or rooms, and for how long a time? A. I never saw Col. Dwight when he was confined to his bed or room.

Q. Mrs. Herdic, do you, or do you not know, whether Col. Dwight was ill and confined to his room during his stay at the Herdic House? A. I have never seen him or known him to be ill, to my knowledge, during that period. 1911

Q. Did or did not the said Walton Dwight have any, and if any, how frequent attacks of coughing in your presence, and how severe were such attacks, if any? A. I never saw Col. Dwight have a severe cough; I have seen him occasionally have a slight cough, but I never saw him have a severe spell of coughing, or paroxysm of coughing; I



never saw him have a severe attack of coughing ; I have seen him cough as a person does when he has a cold ; I never saw him overcome with coughing.

1912 Q. Did the said Walton Dwight, at any time, during his stay in Williamsport, or at any other time, and if so, at what particular time and where, make any statement to you, or in your presence and hearing, as to the nature or character of the illness from which the said Dwight was then suffering or had been suffering? A. As I say, I never knew of his being ill ; I have heard Col. Dwight speak of having a hemorrhage in a general way, that is, not to me particularly ; but I never knew him to have an attack of that kind, to my knowledge or recollection, in Williamsport.

Q. What do you mean by hemorrhage? A. I suppose an attack of bleeding at the lungs or throat ; there are different kinds of hemorrhages ; it may come from the lungs or throat.

1913 Q. Please state, as exactly as you can, using as nearly as you can, the language of Col. Dwight, what was said in your presence or hearing by Col. Dwight, in regard to this hemorrhage, or series of hemorrhages? A. The only remark that I ever remember to have been made by Col. Dwight, was in relation to his cough, at one time, when he said, in the presence of several people, that he expected some time his cough would take him off.

Q. Do you understand by "taking off," that it would result fatally? A. Well, I don't know ; at the time he was not at all ill ; he was the very picture of health at the time ; I should not have supposed, from his appearance, that it could have resulted fatally.

1914 Q. Please state, whether or not, Walton Dwight was attended by any physician during his illness, and if so, what physician or physicians? A. I don't know of any physician that attended him, for I never saw him ill.

Q. According to your present recollection, how

long did Mr. Dwight and his wife reside in Williamsport? A. Well, really, I cannot say, for I do not know.

Q. During their residence in Williamsport, were they ever guests in your house, both at the same time? A. Very frequently.

Q. Was it at the beginning or towards the end of their residence in Williamsport, that you heard Mr. Dwight speak of having a hemorrhage, and did he then state where it was that he had it? A. I never heard him speak of having a hemorrhage but once, to my recollection; I don't remember at what point it was of his sojourn in Williamsport that it was, and I never knew when or where. 1915

Q. Can you now recollect where in Williamsport that it was that he made the statement? A. The only time that I can ever recall a statement of the kind was in their own rooms at the hotel. A party of us were spending the evening in their rooms, and after a slight cough. 1916

Q. Did Col. Dwight speak of having had a hemorrhage in that conversation? A. No, he did not.

Q. Can you now recall the place where you heard him say that he had a hemorrhage, or how the conversation came up? A. I can't recall the time nor place. It was only in a general way that I ever heard it referred to.

Q. Please give the language that he used in that general conversation if you can, and if you cannot, give the substance of what he said of his having had a hemorrhage? A. I could not give the language, neither can I give the time nor place; but I remember of hearing him speak in a general way of having had a hemorrhage. 1917

Q. Do you remember how long Col. Dwight and his wife were here in Williamsport prior to your making their acquaintance? A. I do not.

Q. Did you keep house, or were you living at your father's at that time? A. I was keeping house.

The counsel for the plaintiffs also read the deposition of MARIA HOPPES, taken at Williamsport, Pennsylvania, under commission on behalf of the defendant. (See order and commission above.) He read from the direct-examination as given on behalf of the defendants as follows: I am a widow, my husband's name was George Hoppes; he kept the Herdic House in Williamsport at one time. I don't think I can remember during what period, we have made so many changes since that time; I think about 18 years ago; I think we went to Williamsport from Mauch Chunk to take the Herdic House in 1862. My husband quit the business of keeping the Herdic House. It was a year and a half or two years after we went there; my clerk will know exactly; I think it was August, 1865, when my husband opened the Herdic House; I was my husband's housekeeper for the Herdic House at the time we kept it; I made the acquaintance of one of the plaintiffs, Mrs. Anna N. Dwight, at that time. She and her husband, Col. Walton Dwight, were boarders there, having rooms at that hotel.

Q. Do you recollect Col. Dwight having any illness while at your hotel at Williamsport? A. No, I have no recollection of any illness.

Q. Have you any recollection of his having any severe cough or cold during that time?

Objected to as immaterial and incompetent; and the answer also was separately objected to as immaterial and incompetent. The Court overruled each of the objections, to which rulings the counsel for the defendants duly excepted.

A. I have recollection of him having an ordinary cold such as you would take in severe weather; I do not remember any sickness whatever.

Q. By the word sickness do you mean confined to his bed?

Same separate objections to question and answer; same rulings and exceptions.

A. Yes, sir; I mean confined to his bed.

1921

Q. Did you at any time during Col. Dwight's stay at your house in Williamsport hear him say anything of the nature of the cold or cough that he had, or of his fearing any serious result from it?

Same objections, rulings and exceptions.

A. No recollection whatever.

Q. Have you satisfactory recollection of what occurred while at the Herdic House, or is it somewhat obliterated by time?

1922

Objected to as incompetent and immaterial. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. I think I have a very clear recollection of what happened during my stay at the Herdic House.

Q. Does your present recollection enable you to state with certainty whether Col. Dwight was not ill for several weeks during that time, having an attending physician? A. My recollection is that Dr. Doane prescribed when he was indisposed; but there could have been no very serious sickness, or I should have known it.

1923

The counsel for the defendants in due season objected to this reading of the last sentence of the answer after the word "but," as being irresponsible and incompetent. The Court overruled the

objection, to which ruling the counsel for the defendants duly excepted.

Q. Have you any recollection now of Col. Dwight having a racking cough during any temporary illness that he had during the time he was a boarder  
1924 in your husband's house in Williamsport?

Objected to as immaterial, and also on the ground that the question calls for a conclusion on the part of the witness. The Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. No racking cough, I recollect an ordinary cold.

Q. Did you at any time while Col. Dwight was a boarder at your house, learn, either from him, or  
1925 from observation, or from his wife, or by any other means, that he had spat blood or was then spitting blood? A. I have no recollection.

PLAINTIFFS RESTED.

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CLEMENS DEUTSCHLER, called as a witness on behalf of the defendants, and sworn, testified as follows:

1926 *Examined by Mr. Larocque.*

I reside in Williamsport, Pennsylvania; I have resided there since 1864. I am engaged there in the hotel business, running a 'bus. I have been porter of the City Hotel of Williamsport since the first of July, 1864. I was porter of that hotel during the year 1867; I have produced here the register of the City Hotel at Williamsport which included the year 1867. (Book handed to witness.)



The book now shown me is the register of that hotel, which was kept there for the entrance of guests during the year 1867; the first entry is May 28, 1866, and the last entry is May 20, 1867. I have examined the names entered in that register during the month of March, 1867; I do not find there the name of H. T. Reynolds at any time during that month. I found the name of Reynolds in February; I don't recollect the day; (referring to book) that is it (indicating). The entry to which I refer is under the date of February 7, and the name is W. P. Reynolds, of Philadelphia. 1927

Q. Do you find any guest entered in that hotel register during the months of February, March, or April of that year, by the name of Reynolds, other than the one of W. P. Reynolds under date of February? A. That was the only one I found; there is no other Reynolds entered in those months in that book. 1928

*Cross-examination by Mr. Smith.*

Q. Did you have any other business here but this? A. That is all.

The book referred to was marked for identification, "A. P. L."

*Re-direct-examination by Mr. Larocque.*

Q. Was there any other register than this one kept at the hotel during that time? A. There must be, for that only shows a part of the year.

Q. During the period this was kept was there any other register? A. No, only kept one on the counter. 1929

HARRY CORNWALL, called as a witness on behalf of the defendants, and sworn, testified as follows :

*Examined by Mr. Larocque :*

1930 I reside at Hartford, Connecticut ; am in the employ of the Phoenix Mutual Life Insurance Company ; have been in the employ of that company since December, 1875.

Q. (Paper handed witness.) I call your attention to Exhibit number 19, being an application for insurance in the Phoenix Mutual Life Insurance Company, made by Walton Dwight, dated the 15th of August, 1878 ; do you recognize that as an application presented to your company ? A. I do.

Q. When was that application received at the Home office ? at how early a date, are you able to state ? A. Not later than the 19th of August, 1878.

1931 *By Mr. Newton :*

Q. How do you know ? A. From the endorsement on the application, with which I am familiar ; I was there at that time ; I did not receive that application ; I am not aware that I have seen it before this moment ; I know nothing about it of my own knowledge—no further than the records of the company show ; I don't know as I ever saw the application before, and, as I did not receive it myself—

Q. You therefore don't know anything about it ?  
1932 A. If that means I don't know anything about it of my own knowledge, then I don't.

*To Mr. Larocque.*—I have with me the letter press book used by that corporation during that period. (Produced.)

Q. (Book handed to witness.) Refer to that letter-press book and answer whether or not any action was taken, within your knowledge, based on that application at the date you have mentioned,

and if so, what? A. On the 19th day of August, 1878, this application was received, and on the 24th of August, 1878, it was declined, the company refusing to——

Q. (Indicating paper.) Is this a press copy of a letter which was written in the ordinary course of the business of the company on the 19th of August, 1878, by J. M. Holcomb, secretary, addressed to A. G. Fowler, Chicago, Ill.? A. It is. 1933

Q. This is the press letter book in which copies of business letters written by the corporation at this period were entered before being sent? A. The signature to that letter is in the handwriting of J. M. Holcomb, the secretary of the company. A. G. Fowler, of Chicago, Illinois, to whom the letter was addressed, was at the time general agent, or superintendent of agencies at Chicago.

*To Mr. Newton.*—I do not know whether that letter was mailed at all, of my own knowledge. 1934

Q. You don't know anything about its being written, of your own knowledge? A. Yes; I did not see it written; I think I did not copy it myself. At that time I was a clerk; I did various work in the office—anything I was called upon to do; I do not know that I ever saw that copy before this last week; the first time I saw it was about a week ago; that I can positively state. John M. Holcomb was in Hartford when I last saw him about a week ago; he is employed in that company now; and he is there for aught I know; I left there at 7:20 P. M., Tuesday, a week ago to-morrow. 1935

The copy letter referred to by the witness was then introduced in evidence by the counsel for the defendants as a record made at the time, showing that this application had been received, and was the subject of action by the company at that date in the ordinary course of its business. It was marked Exhibit No. 113.

*By Mr. Larocque :*

Q. Was this letter written on a printed letter sheet of the company which has the date—the figures 187 in print? A. It was.

1936 Q. So that the figure 8, there, denotes the date of the letter to be August 19, 1878? A. Yes.

Q. The 187 being in print? A. Yes.

Q. (Paper handed witness.) I show you a letter, dated Binghamton, August 16, 1878, addressed to J. M. Holcomb, Esq., and purporting to be signed by Robert Brown, with the letter "H" under the name; are you acquainted with the handwriting of that letter? A. I am; it is the handwriting of Mr. H. C. Hermans.

1937 Q. Was Mr. Hermans representing the Phoenix Mutual Life Insurance Company alone, or in company with another person, at Binghamton, in 1878? A. He was not alone; Mr. Robert Brown was the responsible agent, and with whom the company did business; there is nothing about that letter which will enable me to state when it was received by the Phoenix Mutual Life Insurance Company of my own knowledge.

1938 Q. Refer to your books of the company, which you have produced, and see whether or not you find anything in them, any entry in the form of a letter or otherwise, made in the ordinary course of the business of the corporation, which will enable you to fix the date when that letter was received? A. From the application, but not from the books, am I able to fix the exact dates; that was on the 19th of August, not later than the 19th; the letter being dated the 16th.

The letter of H. C. Hermans referred to by the witness was then introduced as evidence. It was marked Exhibit No. 114.

*By Mr. Smith :*

Q. I would like to ask if you know anything

about this letter at all of your own personal knowledge? A. I do; I know it was written in August, 1878.

Q. Do you know it of your own knowledge? A. I do from the records of the company; further I am unable to answer you; that is the extent of my knowledge; I get my knowledge from the files of 1939 the company, the files of letters received.

Q. The knowledge you have is from having found this paper in among the letters of the company, is that it? A. From that and from finding copies of replies to it in the records of the company; I know nothing further, I think, in the line of this matter, but I know the contents of this letter; I find in the book a reply to the letter, at page 688.

Q. Do you mean to have this jury understand that there is anything on that page showing that is a reply to this other letter on the page 688, is there a single word by which you can testify that the original of which that is a copy was a reply to this letter? A. There is; there are five lines in that letter; I didn't write it. 1940

Q. You don't know what it refers to of your own knowledge? A. I do.

Q. How, if you didn't write it? A. From my familiarity with the records of the company and the course of business; not otherwise.

*By Mr. Larocque ;*

Q. Have you that application there? A. I recognize the handwriting of that letter as Mr. 1941 Hermans'.

Q. (Paper handed witness.) Look at the application again (marked Exhibit 19) and say whether you find an entry upon that which enables you to speak with certainty as to the time of the receipt of these papers in the ordinary course of business? A. That application was also produced from the files of the company; I recognize the handwriting of



the endorsement upon it; it is in the handwriting of Levi H. Hotchkiss; that is the endorsement that is usually made in the ordinary course of business.

The endorsement on the application was then introduced in evidence; it appears with the exhibit 1942 (19) in the appendix.

Q. On the cross-examination, you stated you were able to fix the fact of your receipt of this letter and the action upon it, by a reply that was made to it at a certain date; is that reply to which you refer a copy of the letter written by Holcomb, secretary, to Brown, under date of August 24th, 1878? A. Yes; that is the letter; that letter is in the handwriting of Levi H. Hotchkiss, and signed J. H. Holcomb as secretary; Hotchkiss was the clerk who received from the secretary the applications and filed them, and saw that policies were issued on such as were approved, and declined applications—acting under the direction of the secretary in the ordinary course of his duties; it was his custom in such correspondence to sign the name of the secretary with the letter “H” after it; and the letter I refer to is contained in the press letter book of the corporation; the book is marked “General, 1878,” on the side and “Letters” on the back, and “P. M. L. Insurance Company.”

1943

Q. Are you able to state, from your familiarity with the course of business of the company and the records kept in the office of the company, in the ordinary course of business, in relation to the action had by it on the application for insurance, what disposition was made of the application which had been submitted? A. I am.

1944

Q. What disposition was made of the application which has been presented to you upon the stand? A. This application was declined, or not approved; that final action was had on the 24th of August, 1878.

*Cross-examination by Mr. Newton :*

I have examined that letter book to see whether there was any further action after the 24th than that taken by that company; I find letters, but no action; there was one on the 24th; there were two on the 24th; one was to Brown and the other was to Dr. J. G. Wilbur, of New York; on page 680, 1945  
 August 31, I find a letter; I find no more after that; there were no others between the 16th and the 31st, in relation to this application, except the one of the 19th, the two of the 24th, and one of the 31st; Dr. Wilbur is the medical examiner of the Phoenix at New York city; the letter of the 19th was written to A. G. Fowler, of Chicago.

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FREDERICK E. ROSS, called as a witness on behalf 1946  
 of the defendants and sworn :

*Examined by Mr. Larocque :*

I reside in Binghamton, New York ; have resided there most all my life ; I am cashier of the Merchants' National Bank of Binghamton ; have been connected with that bank as cashier since January, 1881—in other capacities since 1873 ; I was out three years ; my first connection with the bank was in 1873 as bookkeeper ; I remained with the bank then in that capacity a little over four years, and returned to the bank in 1881 ; I have the 1947  
 ledger of the bank in which the account of T. F. McDonald was kept during the year 1878 (produced).

Q. (Book handed witness.) Will you refer to that account and see if you are able to find a deposit of one thousand dollars by Mr. McDonald at any time in the month of August, 1878 ? A. No one deposit of one thousand.

*Cross-examination by Mr. Smith :*

Q. How about the 3d of September ?

1948

Objected to as incompetent, irrelevant and immaterial, the evidence of the witness McDonald sought to be contradicted being distinctly that in August he received a thousand dollars from Dwight and deposited it in the Merchants' National Bank of Binghamton ; the Court overruled the objection, to which ruling the counsel for the defendants duly excepted.

A. Yes, there are two.

Q. How much are they ?

Same objection, ruling and exception.

1949

A. One of \$987.75 and another of \$1,100.00 ; there are a good many deposits during the month of August ; checks all along.

*Re-direct-examination by Mr. Larocque :*

Q. Do you find any deposit in the month of August, of \$1,000, or as much as that sum ? A. No, nor any sum approaching it ; the largest deposit that I find at any time in the month of August is \$500.

1950

CHARLES H. PORTER, recalled on behalf of the defendants, further testified as follows :

*Examined by Mr. Larocque.*

Q. Assuming that a man forty-one years of age, who had previously enjoyed robust health, had been complaining for about three weeks, and was

found on a Saturday morning in bed shivering, teeth chattering, surface clammy and cold, with the blood settled under his nails, and so continued from one to two hours, breaking out into a cold sweat, with a feeble, whispering voice, and that this attack passes off without a fever; that the second Friday after this occurrence, having during the day been up attending to business with his lawyer, having his beard dressed by a barber, he was left at ten P. M. by his doctor in such a condition as to create no alarm; that at or about eleven P. M. he spoke pleasantly to his attendant, calling the attention of his attendant to his manner of eating a cracker, helping himself to one from a dish near his bed, and chewing it without difficulty; that within fifteen minutes the attention of the attendant was called to such a man by a gasping noise; that this man was dead within a few minutes thereafter; that at the autopsy held within fifty-eight hours after the death, the liver and spleen were found to be normal, except congested, the heart nearly empty, and that there was no pigmentation anywhere, could such a man have died of congestive chill, or any other form of malarial fever? A. In my opinion he could not have died of congestive chill, or any other form of malarial fever.

Q. Suppose that a man after an obscure alleged illness of about five weeks duration is, on a given day, able to be up and transact business with his lawyer, and have his beard trimmed; is left by his doctor at ten P. M. on the same day in such a condition as not to give any cause for alarm, and that at eleven P. M. is talking pleasantly to his attendant, and eating a cracker, and in less than half an hour after is dead, and that at the autopsy made fifty-eight hours after death the following conditions are revealed: A heavy indentation extending upwards and backwards from os hyoides to right around back of neck, and on the left side below the thyroid cartilage, running upwards

- and backwards at an angle of about forty-five degrees ; post-mortem discoloration of posterior portion of body ; several small ecchymoses of skin of back and shoulders ; anterior part of right arm small ecchymoses ; thorax, lungs and heart in natural condition, except that the lungs are unduly
- 1954 inflated. About four ounces of serum in bottom of left pleural cavity, the same amount in right pleural cavity, left lung one pound and three-quarters ; bronchi congested and coated with mucus ; upper lobe congested and œdematous ; lower lobe still more congested and œdematous, right lung two pounds, bronchi congested and coated with mucus, upper lobe at the apex several small fibrous nodules, rest of upper lobe congested and œdematous ; lower lobe congested and œdematous ; heart healthy, weight fifteen ounces ; right ventricle contains a little fluid blood, not over one-half ounce ; left ventricle contains little fluid
- 1955 blood, not over one-half ounce ; left auricle contains a little clotted blood ; stomach at the fundus, mucous membrane softened and partly destroyed by post-mortem changes ; pyloric end of stomach, mucous membrane studded with small white spots denoting chronic gastritis ; liver congested more than usual, normal color and consistence ; kidneys uniformly congested, and otherwise healthy ; epiglottis, larynx and trachea congested and coated with mucus ; inner surface of dura mater on left side chronic hemorrhagic pachy-
- 1956 meningitis, with a small extravasation of blood on the left side, over the posterior portion of the parietal and anterior portion of the occipital lobes ; pia mater of convexity normal, except discoloration over occipital lobes from blood ; brain neither congested nor anæmic, otherwise healthy ; and further, that at an inquest held five months after the first autopsy, the indentation on the neck was still distinctly visible—could, or not, death have



been produced by natural causes? A. In my opinion, it could not.

Q. Assuming the conditions stated in the last question, what was the cause of death, in your opinion? A. In my opinion the cause of death was asphyxia, mechanical asphyxia, by strangulation, hanging. 1957

Q. Assuming that the heart of Col. Dwight was replaced at the first autopsy, what would be the effect upon its fibre of pouring down his throat a pint of chemical stuff made of arsenic, corrosive sublimate, camphor and carbolic acid, and other poisonous stuff, after the closure of the body; would such application or not account for the sound condition of the heart as found at the second autopsy? A. In my opinion it would tend to preserve the heart and prevent decomposition.

*Cross-examination by Mr. Smith:* 1958

I never knew a case where a heart had been subjected to these operations; I have known of a case where the heart has been subjected to the influence of these drugs; I have preserved those things myself after they were taken out.

(*To the Court.*) I remember the hypothetical question which was put to me, next to the last one, in which I answered that it was my opinion that death was caused by mechanical asphyxia.

Q. Suppose that the indentation or furrow that you speak of was caused after death, instead of before death, then what would be your opinion, 1959 throwing that out? A. It would not change my views; I can't see how, under the circumstances mentioned—I do not know of any disease that would have caused those post-mortem conditions within the cavity of the chest and thorax, within the time mentioned.

Q. Now, throw out of the question the finding of mucus in the bronchial tubes, I think that was

the place where one of the witnesses testified it was found, and another testified that there was none found, and throw that out, and then what is your opinion? A. There is always mucus in the bronchial tube.

1960 Q. Throw out the "bloody mucus?" A. That would not essentially modify my opinion, although I would say that the question, or answer, was based upon a condition, not of one, and not of most of all the facts stated, and to eliminate one or more facts of course does not give us so perfect a picture; I do not think the mere fact—of course, in any event, I would say there would be some mucus in the bronchial tubes; if there was no bloody mucus found that would not change my opinion essentially.

Q. And if the indentation was caused or produced by effects after death, that would not change your opinion? A. It would tend to weaken it.

1961 Q. Would it change it? A. No; I would say this, to start again; I do not know of any disease that would cause that particular condition mentioned, and eliminating, or striking out the "bloody mucus," that would cause that condition within the space of time that death occurred, and, therefore, I would look to other causes which might produce that death.

Q. In your opinion could the peculiar conditions which you are assuming to exist in this hypothetical question be caused by any other means than by strangulation by means of a cord or fillet compressing the windpipe? A. Yes, I think so.

1962 Q. (*By Mr. Smith.*) Do you understand this substantially to involve the same questions which you were asked when on the stand before? A. Not entirely so.

Q. Is there any new feature added? A. No, I don't recollect of anything at this moment.

Q. I want to know if you recognize, as a matter of medical science, that men die without its being

possible, with all the doctors that examine the person, to ascertain, from an autopsy, the cause of death? A. I question that, on a careful examination, if the previous history is known. I think I understand your question.

Q. A man is found dead; you examine his body and cannot ascertain from the autopsy the cause of his death? A. Yes; I have no doubt of that. 1963

Q. That is quite common, isn't it? A. Yes; it might be.

Q. Is it not a common thing of experience in medical science, for medical gentlemen, no matter how learned, to be unable during life, to discover the cause of human ailment? A. Yes; certainly it is, but not so very common.

Q. Too common for public good? A. Yes; it isn't very infrequent.

Q. Do you mean to be understood that upon a theoretical question like this, that was put to you, there are such facts given as to enable you to know from science, as an expert, just exactly what caused this man's death, and to exclude all other causes? A. I think so. 1964

Q. That you could tell exactly? A. Yes.

Q. Without having seen the man? A. I think so.

Q. And excluding every other possible cause, you can tell what the cause was? A. I think so.

Q. What is the first fact in this question? A. I can't state positively, nor can I positively state what weight I give to that; I can't say what is the second fact in the question, nor the third, nor the fourth; I can't state, numerically, any of them. 1965

Q. What is the last one? A. I don't remember certainly.

Q. (*By the Court.*) Do you think the conditions assumed to exist in the various organs could have been produced by other means than by a rope checking the flow of blood through the arteries? A. I do.

Q. (*By Mr. Larocque.*) I ask you whether the

- internal conditions would be the same in asphyxia by smothering? A. I think it is essentially the same ; I think I slightly misapprehended, or possibly so. I was asked essentially if there was not any other possible mode, or a possible mode of natural death in a suppositious case, and I said no.
- 1966 Of course, it is not to be assumed that every one knows every possible cause of death, but if I find an adequate cause of death, or a condition that I think would produce death, I cannot accept something unknown and mysterious when I find something evident and patent to me, and, therefore, I say that I see this death was caused by asphyxia, which could have occurred within the time mentioned, and produced the facts noted.
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- 1967 HORATIO C. WOOD, recalled on behalf of the defendants, further testified as follows :

*Examined by Mr. Larocque :*

- Q. Assuming that a man of forty-one years of age, who had previously enjoyed robust health, had been complaining for about three weeks, and was found on a Saturday morning in bed shivering, teeth chattering, surface clammy and cold, with the blood settled under his nails, and so continued for from one to two hours, breaking out into a cold sweat, with a feeble whispering voice, and that this
- 1968 attack passes off without fever ; that the second Friday after this occurrence, having during the day been up attending to business with his lawyer, and having his beard dressed by a barber, he was left about ten P. M. by his doctor in such a condition as to create no alarm ; that at or about eleven P. M. he spoke pleasantly to his attendant, calling the attention of his attendant to his manner of eating a cracker, helping himself to one from a dish near

his bed and chewing it without difficulty; that within fifteen minutes the attention of the attendant was called to such man by a gasping noise; that this man was dead within a few minutes thereafter; that at the autopsy, held within fifty-eight hours after the death, the liver and spleen were found to be normal except congested, the heart nearly empty, and that there was no pigmentation anywhere; could such a man have died of congestive chill, or any other form of malarial fever? A. He could not. 1969

Q. Will you state the facts upon which you base this answer?

Objected to on the ground that they can only base their question on facts of which evidence has been given, and it is not for the witness to make a supposititious case of facts, and as re-opening the case. 1970

*The Court.*—I think the last objection is a good one.

The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

Q. Suppose that a man after an obscure alleged illness of about five weeks' duration is on a given day able to be up and transact business with his lawyer, and have his beard trimmed; is left by his doctor at ten P. M. on the same day in such a condition as not to give any cause for alarm, and at eleven P. M. is talking pleasantly to his attendant and eating a cracker, and in less than an hour thereafter is dead; and that at the autopsy, made fifty-eight hours after death, the following facts are revealed; a heavy indentation extending upwards and backwards from os hyoides to right around back of neck and on left side below the thyroid cartilage, 1971



- running upwards and backwards at an angle of about forty-five degrees, post-mortem discoloration of posterior portion of body, several small ecchymoses in skin of back and shoulders; anterior part of right arm small ecchymosis; thorax, lungs and heart in natural condition, except that the lungs are unduly inflated; about four ounces of serum in bottom of left pleural cavity; the same in right pleural cavity; left lung one pound and three-quarters; bronchi congested and coated with mucus, upper lobe congested and œdematous, lower lobe still more congested and œdematous; right lung two pounds, bronchi congested and coated with mucus, upper lobe at the apex several small fibrous nodules, rest of upper lobe congested and œdematous, lower lobe congested and œdematous; heart healthy, weight fifteen ounces, right ventricle contains a little fluid blood, not over one-half ounce, left ventricle contains little fluid, not over one-half ounce, left auricle contains a little clotted blood; stomach at the fundus, mucous membrane softened and partly destroyed by post-mortem changes; pyloric end of stomach, mucous membrane studded with small white spots denoting chronic gastritis; liver congested more than usual, normal color and consistence; kidneys uniformly congested, but otherwise healthy; epiglottis, larynx and trachea congested and coated with mucus; inner surface of dura mater on left side chronic hemorrhagic pachy-meningitis, with a small extravasation of blood on the left side, over the posterior portion of the parietal and anterior portion of occipital lobes; pia mater of convexity normal, except discoloration over occipital lobes from blood; brain neither congested nor anæmic, otherwise healthy; and further, that an inquest held five months after the first autopsy, the indentation on the neck was still distinctly visible; could or not death have been produced by natural causes? A. No.

Q. Assuming the same conditions as are stated in the last question, state what was the cause of death? A. Mechanical asphyxia, produced by strangulation with a cord or some similar article.

Q. Will you state the facts from which you reach this conclusion?

1975

Objected to the same as to the previous question. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

Q. Assuming that the heart of Col. Dwight was replaced at the first autopsy, what would be the effect upon its fiber of pouring down his throat a pint of chemical stuff made of arsenic, corrosive sublimate, camphor and carbolic acid, and other poisonous stuff after the closure of the body; would such application or not account for the sound condition of the heart as found at the second autopsy?

1976

A. The tendency of such liquid would be to preserve whatever it came in contact with animal tissue that came in contact with it—if in a body which had been put on ice, and a few hours after death the mucous membrane is found softened and partly destroyed upon the post-mortem examination, it would do just what these things indicate as regards congestion immediately preceding death.

Q. Assuming that the body of a man, weighing in the neighborhood of two hundred pounds, forty-one years of age, having a full, fleshy neck, about two hours after death is placed upon a board on its back, with the head raised upon a book and two pillows, and left in that position for about nine hours, and then placed in an ice-box, with its head elevated at an angle of about forty-five degrees, and left there for about forty-eight hours, and then removed and placed flat on a table; is it possible that a heavy indentation, commencing near the Adam's apple and

1977

running upward and backward at an angle of about forty-five degrees on either side to within less than two inches of meeting in the rear, could be produced by the changes in position stated? A. In my opinion, it is not possible.

1978 *Cross-examination by Mr. Smith :*

Q. Have you any special experience as to wrinkles in the skin after death? A. I have had, sir.

Q. Can you recall a case since you were born? A. I can't recollect any before I was born, sir, but I can recall a case, and it must have been since I was born. I can recall distinctly two cases.

Q. Can you recollect a case of a man's dying by asphyxia? A. Yes; I can't give the name, but I can give the circumstances of the death.

Q. Did you have any experience as to the folds of this skin? A. Yes.

1979 Q. In the ice-box? A. No.

Q. Or the effect of being taken out of an ice-box? A. No.

Q. Or whether his head was laid on a book or a pillow? A. No; not on a book or pillow.

Q. Is that the extent of your experience with dead bodies, so far as the folds of the skin are concerned, after they have been subjected to an atmospheric condition of an ice-box, and afterwards placed on a board? A. No.

Q. Then in your answer to that question you guessed at it? A. No.

1980 Q. You are without personal knowledge? A. I am not.

Q. Have you any personal knowledge of cases of the kind I have stated, I want you to tell whether you have had any personal knowledge or experience in reference to the folds of the skin or the outer surface of a body that has been exposed to the operation of the air of an ice box, and then taken out and laid on a board? A. Yes; I cannot

give the names ; I can't say how many cases, but a great many—scores, I should say—that means over forty ; I cannot name a single one.

Q. Is there any scientific rule, any rule laid down in the books, any rule that has been promulgated by the common consent of men, by which you can test whether a fold in the skin was produced before 1981 or after death ? A. No ; none laid down in the books that I know of.

Q. Is there any in your head that you have not written in a book ? A. No. I have heard several hypothetical questions read here to me this morning ; I helped compose them, in a house in the town of Norwich. There was a meeting composed partially of doctors and lawyers.

Q. Was the meeting composed of the lawyers who were to put the questions, and the doctors who were to answer them ? A. Yes ; they made up the scientific questions.

Q. These hypothetical questions put to you are 1982 some that were conceived and written down by this assemblage of gentlemen you have referred to ? A. I think all of them.

Q. And do you remember them as you sit there in the chair ? A. Yes.

Q. Are we right in understanding that you testified on the stand before that in your opinion Walton Dwight died from asphyxia, and not from any other cause ; did you testify to that ? A. Not according to my recollection. I have no recollection of saying a word about Walton Dwight. I was asked a hypothetical question and Walton Dwight's 1983 name was not mentioned.

Q. In answer to that question, did you state that upon the facts stated you were prepared to give the opinion that whoever he was, be the same more or less, he died from asphyxia, and no other cause ? A. Yes.

Q. And you stick to that ? A. I certainly do.

Q. And you mean by asphyxia, hanging by a

cord? A. Asphyxia does not mean that necessarily. It may be produced by other substances than a cord.

Q. I ask whether, in answer to that question the other day, in reference to asphyxia, you meant asphyxia from a rope or cord? A. Yes.

1984 Q. They put to you another question; there is something in this question about that man's age; has that anything to do with it? A. Slightly; it is a grain of sand in a big heap. The question of a man's age bears on the whole question as the grain of sand to the large heap, or a drop to the ocean.

Q. Take the day he died, has that anything to do with it? A. Not without the rest of the question; not without its relation to the other part of the question. It has a very distinct relation to the rest of the question. Isolated from the question it is of no importance, but in relation to the rest of the question it is of importance.

1985 Q. Whether he could keep anything on his stomach or not; has that anything to do with determining whether he died from asphyxia? A. That was not in the question; there was something about a cracker in the question. The power of eating a cracker has a good deal to do with the cause of death by asphyxia. A man could eat five minutes before his death by hanging, as well as any time—that is my opinion.

At the meeting referred to at which the hypothetical questions were composed there were Drs. Porter and Swinburne and Dr. Bridges and Dr. Sherman and myself; but I believe Dr. Porter was not there during the making of the questions. I am uncertain at what time Dr. Porter came in; we had only one meeting.

1986 Q. Are you acting in any other capacity in this case than as a witness? A. I am acting in this case as an expert. By "expert" I mean a person who shall aid in bringing out the scientific facts in a case, and give an opinion thereon.



Q. Did you understand it to be any part of the duties, or the impartial office of an expert to take part in the trial as counsel? A. I do so far as to assist in bringing out the scientific facts of the case. I have been sitting with the counsel during this trial, and have been giving suggestions; I have been writing on paper with ink or some other substance that produced characters. I have not been writing through the trial here, excepting writing suggestions to counsel, suggesting questions to be put. I am acting here under pay as a witness; I am not a hired witness. 1987

Q. You are here as a witness for pay, beyond testifying on the stand? A. I am here as an expert; I am here under pay by these defendants.

Q. To perform any other office than to give your honest, impartial, sworn statement? A. Not so far as the witness stand is concerned. I am here to give information in the case—not to co-operate in the case. 1988

Q. But in preparing questions and to go on the stand and swear to them? A. That is all.

*Re-direct-examination by Mr. Larocque :*

Q. You were asked on the other side whether you had any experience which would enable you to give an opinion in regard to the causes which would produce these marks or indentations upon the neck, and you were asked whether or not you had ever in your experience placed the body of a man upon a board, first supported by a book and pillows, and then placed in an ice box and kept a certain length of time and then placed on a board; state whether, in your experience you have had the case of a body which shortly after death was placed in a position with the head raised at an angle of forty-five degrees or thereabouts, and kept in that position forty-eight hours, in an atmosphere 1989

in which the rigor mortis was produced, or in a freezing atmosphere? A. I have.

*Re-cross-examination by Mr. Smith :*

1990 My last answer was that I had had such an experience ; I don't know the name—who it was ; I have no sort of suspicion as to the name ; it was two men, in the hospital connected with the so-called Philadelphia Hospital, on Pine street, between 34th and 36th, in the city of Philadelphia. That was last Thursday to Saturday ; bodies were put in position on Thursday and Friday morning, and were left there, one about forty-eight hours and the other a less length of time.

Q. You had not been killing anybody to make these experiments? A. No, it is not necessary in that hospital, nature does it for us. I went home for other purposes and made the experiments. I 1991 commenced early Friday morning and finished them Saturday afternoon ; they were the bodies of men.

Q. I knew it was not their spirits. A. They were men ; I put it that way because it was exact. The depth of your ignorance—I cannot plumb it.

Q. What do you mean by your expression, “ the depth of your ignorance ”? A. You seem to know so little, I have to make everything very plain.

Q. Do I understand you swear to all this? A. I do, sir.

Q. You went down there and took two dead 1992 bodies, and my question is, were they men or women? A. They were bodies of men ; I did not put them in an ice box, but they were put in cool air, and were laid in position under my direction ; one of them was kept there exactly forty-eight hours, and the other about fifteen ; then they were taken out and laid on a board, and then I examined the folds of the neck.

Q. And was that to enable you to come here and

swear as to the experiments? A. It was to study the question.

Q. Answer my question. Was that done with a view to enable you to come here and give testimony upon that subject? tell these gentlemen what the truth is? A. The truth is, it was done in order that I might test the question and give testimony here 1993 from immediate and direct experiment; I did not bring the bodies with me—they were inconvenient pocket pieces; it would have been inconvenient.

Q. What do you mean by inconvenient pocket pieces? A. That it would be inconvenient to bring them here; I never saw Col. Dwight.

Q. You don't know how the condition of these bodies compared with his, as to size and weight and volume, flexibility and pigment? A. Not from personal knowledge, I do not.

Q. You don't know what the pigment of the epidermis was? A. Yes.

Q. Have you given your opinion here on this trial, when you were inquired of, as to the possibility of producing these conditions described, based solely upon the results of the experiments you have just described as having been made with those two unfortunate dead bodies? A. If you mean by "conditions described" in the question, the folds of the neck, I say no. 1994

Q. Do you know of any other cases? A. I can't give individual cases.

Q. Do you know of anything in the books on the subject, including the books that have been composed by Dr. Wood? A. No, I do not. 1995

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BENJAMIN F. SHERMAN, recalled on behalf of the defendants, further testified as follows:

*Examined by Mr. Larocque:*

'I was present at the coroner's inquest, which was

held on the body of Walton Dwight, at Binghamton, in April, 1879.

Q. Did you, or did you not, on that occasion, call particular attention of the coroner and the members of the coroner's jury to the groove which existed in the neck of the body there exposed ?

1996

Objected to on the ground that the question has already been put to the witness, and on the further ground that the effect of the question is to re-open the case. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

1997

Q. Assuming that a man of forty-one years of age, who had previously enjoyed robust health, had been complaining for about three weeks, and was found on a Saturday morning in bed, shivering, teeth chattering, surface clammy and cold, with the blood settled under his nails, and so continued for from one to two hours, breaking out into a cold sweat, with a feeble, whispering voice, and that this attack passes off without fever; that the second Friday after this occurrence, having during the day been up attending to business with his lawyer, and having his beard dressed by a barber, he was left about 10 P.M. by his doctor in such a condition as to create no alarm; that at or about eleven P. M., he spoke pleasantly to his attendant, calling his attention to

1998

his manner of eating a cracker, helping himself to one from a dish near his bed, and chewing it without difficulty; that within fifteen minutes the attention of the attendant was called to such man by a gasping noise, and that this man was dead in a few minutes thereafter; that at an autopsy held within fifty-eight hours after death, the liver and spleen were found to be normal, except congested, the heart nearly empty, and that there was no pig-

mentation anywhere—could or could not such a man have died of congestive chill, or any other form of malarial fever? A. He could not, sir.

Q. Suppose that a man after an obscure alleged illness, of about five weeks' duration, is on a given day able to be up and transact business with his lawyer, and have his beard trimmed, is left by his doctor at ten P. M. on the same day in such a condition as not to give any cause for alarm, and at eleven P. M. is talking pleasantly with his attendant, and eating a cracker, and in less than a half an hour thereafter is dead; and that at the autopsy made fifty-eight hours after death, the following conditions are revealed: A heavy indentation extending upwards and backwards from os hyoides to right around back of neck and on left side below the thyroid cartilage, running upwards and backwards at an angle of about forty-five degrees; post-mortem discoloration of posterior portion of body; several small ecchymoses of skin of back and shoulders; anterior part of right arm, small ecchymosis; thorax, lungs and heart in natural position, except that the lungs are unduly inflated; about four ounces of serum in bottom of left pleural cavity; the same amount in right pleural cavity; left lung one pound and three-quarters; bronchi congested and coated with mucus; upper lobe congested and oedematous; lower lobe still more congested and oedematous. Right lung, two pounds; bronchi congested and coated with mucus; upper lobe at the apex several small fibrous nodules; rest of upper lobe congested and oedematous; lower lobe congested and oedematous; heart healthy—weight fifteen ounces; right ventricle contains a little fluid blood, not over one-half ounce; left ventricle contains a little fluid blood, not over one-half ounce; left auricle contains a little clotted blood; stomach at the fundus mucous membrane softened and partly destroyed by post-mortem changes; pyloric end of stomach mucous membrane studde



with small white spots, denoting chronic gastritis ; liver congested more than usual, normal color and consistence ; kidneys uniformly congested but otherwise healthy ; epiglottis, larynx and trachea congested and coated with mucus ; inner surface of dura mater in left side chronic hemorrhagic pachymeningitis, with a small extravasation of blood on the left side over the posterior portion of the parietal and anterior portion of occipital lobes ; pia mater of convexity normal, except discoloration over occipital lobes from blood ; brain neither congested nor anæmic, otherwise healthy ; and further, that at an inquest held five months after the first autopsy, the indentation on the neck was still distinctly visible ;—could or could not death have been produced by natural causes ? A. No, it could not.

2002 Q. Assuming the same conditions as in the last preceding question, what was the cause of death ?  
A. Asphyxia from mechanical causes—from a rope or cord about the neck.

2004 Q. Assuming that the body of a man weighing in the neighborhood of two hundred pounds, forty-one years of age, having a full, fleshy neck, about two hours after death is placed upon a board on its back, with the head raised upon a book and two pillows, and left in that position for about nine hours, and then placed in an ice box with its head elevated at an angle of about forty-five degrees, and left there for about forty-eight hours, and then removed and placed flat on a table—is it possible that a heavy indentation commencing near the Adam's apple and running upwards and backwards at an angle of about forty-five degrees on either side to within less than two inches of meeting in the rear, could be produced by the changes in position stated ? A. No, it could not.

*Cross-examination by Mr. Smith.*

Q. Are you one of the doctors that took part in

composing this question, these hypothetical questions? A. I was one of the doctors present, there may be one word or two in it that I suggested, but no more than that. Dr. Porter was there a small part of the time, a portion of the time.

Q. Have you any experience on the subject of indentations in the neck? A. I have. 2005

Q. Of the living or the dead? A. Of the dead, and some in the living.

Q. How many—have you any personal experience where you have observed cases of indentation in the bodies of persons who have died? A. I have personal experience where there was no indentation after the circumstances really existed.

(Question repeated.) A. No, no indentation.

Q. You have not? A. No.

Q. You have had a case, you say, where the body was smooth; you mean by that that a man could die without having wrinkles? A. A baby might but I don't think a man could. 2006

Q. Take a stout athletic man, is it necessary that he should have wrinkles of the neck in order to die? A. No, not to die; he could die with the wrinkles, very likely, produced by natural causes—wrinkles or no wrinkles.

*Re-direct-examination by Mr. Russell:*

Q. I ask you if you have had any personal experience of indentation in the neck that appeared upon dead bodies and were made by a rope around the neck? A. I have, frequently. 2007

Q. And in answer to the question of the counsel as to the indentations, as to the non-existence of indentations in the neck after death, did you or did you not refer to cases of experiments you have personally made to ascertain whether cold would cause a fold or groove in the neck which would not be removable as soon as the cold was taken away? A.

Yes, that was my understanding of it ; I have had such experiences in practice.

Q. What was the result of those experiments?

2008

Objected to as incompetent and as improper, and that it is not competent for the defendant to call on the medical gentleman to give isolated cases. The Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

*Re-cross-examination by Mr. Smith :*

I did not go home Sunday to make any experiments, but I went to Philadelphia.

2009 JOHN SWINBURNE, recalled on behalf of the defendants, further testified as follows :

*Examined by Mr. Larocque :*

2010 Q. Assuming that a man forty-one years of age, who had previously enjoyed robust health, had been complaining for about three weeks, and was found on a Saturday morning in bed, shivering, teeth chattering, surface clammy and cold, with the blood settled under his nails, and so continued for from one to two hours, breaking out into a cold sweat, with a feeble, whispering voice, and that this attack passes off without fever ; that the second Friday after this occurrence, having during the day been up attending to business with his lawyer, and having his beard dressed by a barber, he was left about 10 P. M. by his doctor in such a condition as to create no alarm ; that at or about 11 P. M. he spoke pleasantly to his attendant, calling his attention to his manner of eating a cracker, helping himself to one from a dish near his bed, and chew-

ing it without difficulty ; that within fifteen minutes the attention of the attendant was called to such man by a gasping noise, and that this man was dead in a few minutes thereafter ; that at an autopsy held within fifty-eight hours after death, the liver and spleen were found to be normal, except congested, the heart nearly empty, and that there was no pigmentation anywhere,—could or could not such man have died of congestive chill, or any other form of malarial fever? A. I should say not, sir. 2011

Q. Suppose that a man after an obscure alleged illness of about five weeks duration, is on a given day able to be up and transact business with his lawyer, and have his beard trimmed, is left by his doctor at ten P. M. on the same day in such a condition as not to give any cause for alarm, and at eleven P. M. is talking pleasantly with his attendant and eating a cracker, and in less than half an hour thereafter is dead ; and that at the autopsy made fifty-eight hours after death , the following conditions are revealed; a heavy indentation extending upwards and backwards from os hyoides to right around back of neck, and on left side below the thyroid cartilage running upwards and backwards at an angle of about forty-five degrees ; post-mortem discoloration of posterior portion of body, several small ecchymoses of skin on back and shoulders ; anterior part of right arm, small ecchymosis ; thorax, lungs and heart in natural position, except that the lungs are unduly inflated ; about four ounces of serum in bottom of left pleural cavity ; the same amount in right pleural cavity ; left lung, one pound and three-quarters ; bronchi congested and coated with mucus ; upper lobe congested and œdematous ; lower lobe still more congested and oedematous ; right lung two pounds ; bronchi congested and coated with mucus, upper lobe at the apex several small fibrous nodules ; rest of 2012 2013

- upper lobe congested and oedematous ; lower lobe congested and oedematous ; heart healthy, weight fifteen ounces ; right ventricle contains a little fluid blood, not over one-half ounce ; left ventricle contains a little fluid blood, not over one-half ounce ; left auricle contains a little clotted blood ; stomach at the fundus, mucous membrane softened and partly destroyed by post-mortem changes ; pyloric end of stomach mucous membrane studded with small white spots, denoting chronic gastritis ; liver congested more than usual, normal color and consistence ; kidneys uniformly congested but otherwise healthy ; epiglottis, larynx and trachea congested and coated with mucus ; inner surface of dura mater in left side, chronic hemorrhagic pachy-meningitis, with a small extravasation of blood on the left side over the posterior portion of the parietal and anterior portion of the occipital lobes ; pia-mater of convexity normal, except discoloration over occipital lobes from blood ; brain neither congested nor anæmic and otherwise healthy ; and further, that at an inquest held five months after the first autopsy the indentation on the neck was still distinctly visible,—could or could not death have been produced by natural causes ? A. I should say not.

Q. Assuming the same conditions as stated in the last preceding question, what was the cause of death ? A. I should say from asphyxia and with a rope or cord.

- Q. Assuming that the body of a man, weighing in the neighborhood of two hundred pounds, forty-one years of age, having a full fleshy neck, about two hours after death is placed upon a board on its back, with the head raised upon a book and two pillows, and left in that position for about nine hours, and then placed in an ice-box with its head elevated at an angle of about forty-five degrees, and left there for about forty-eight hours, and then removed and



placed flat on a table, is it possible that a heavy indentation, commencing near the Adam's apple, and running upward and backward at an angle of about forty-five degrees on either side to within less than two inches of meeting in the rear, could be produced by the changes in position stated? A. I should say not. 2017

*Cross-examination by Mr. Smith:*

I do not know of the case of the death last Thanksgiving morning of the Unitarian Clergyman in Boston, who died while delivering his morning prayer, in the pulpit. I have not heard or read of that case; I know all about the death of the late Dr. Sims, as far as the papers go. I assume they are true; I do not read more about the doctors than the dominies; but it is something more in my line; I attended a reception at Dr. Sims' a few days before that, and we were very intimate friends. Dr. Sims was a man seventy-two years of age, and your supposed case is of forty-one. 2018

Q. Do you regard, as a scientific gentleman, the question of a man's age, standing alone, bears at all on the question as to how he may die, or, if he is found dead, how he has died? A. Yes, it is a very important element; it is sometimes controlling in the inquiry.

Q. So, if a man died at one hundred, with his head cut off, he would be regarded as dying of old age? A. No.

Q. I ask whether the fact that a man having died, had shortly before his death been visited by a doctor, would bear on the question of science as to whether he died from natural or artificial causes? A. I don't think it would. 2019

Q. How would it be if he had been visited by a lawyer within a few hours; would that bear upon the question? A. I think it would very materially.

Q. Do you think that would bear more on the

nature of his death or on the heft of his purse? A. On the purse, I think.

2020 Q. Do you think the fact that he had had his hair or beard cut would bear on the question as to the cause of his death? A. No, excepting in so far as it would show he was in the condition to be able to bear the sitting up, and bear the manipulation.

Q. I ask you whether the cutting of a man's hair as a fact, bears on the question of the cause of his death? A. If I am not allowed to explain, I will say yes.

2021 Q. I want you to tell that jury how the fact that the man has had his hair cut, bears on the question of the cause of his death? A. If a man is well enough at four o'clock in the afternoon, as he dies at eleven o'clock at night, to sit up and have his hair cut and whiskers trimmed, it will show conclusively that he is not a very sick man. In that respect it bears.

Q. In any other respect? A. I can't say it does. I was not one of the gentlemen who assisted in composing these hypothetical questions; I attended a meeting, and heard those read; I told them what I would swear to.

Q. Was the question as to the answers to be made to those questions, discussed? A. They were not, in my presence.

2022 Q. Is that as near as you can come to the answer? A. Yes, I wasn't in until late—I didn't hear what they said. I answer for my own self. This is the fourth week that I have been here in Norwich.

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ELISHA H. BRIDGES, recalled on behalf of the defendants, further testified as follows:

*Examined by Mr. Larocque:*

Q. Assuming that a man, forty-one years of age,

who had previously enjoyed robust health, had been complaining for about three weeks, and was found on a Saturday morning in bed, shivering, teeth chattering, surface clammy and cold, with the blood settled under his nails, and so continued for from one to two hours breaking out into a cold sweat, with a feeble, whispering voice, and that this attack passes off without fever; that the second Friday after this occurrence, having during the day been up attending to business with his lawyer, and having his beard dressed by a barber, he was left at ten P. M. by his doctor, in such a condition as to create no alarm; that at or about eleven P. M. he spoke pleasantly to his attendant, calling the attention of his attendant to his manner of eating a cracker, helping himself to one from a dish near his bed, and chewing it without difficulty; that within fifteen minutes the attention of the attendant was called to such man by a gasping noise; that this man was dead within a few minutes thereafter; that at the autopsy held within fifty-eight hours after the death, the liver and spleen were found to be normal, except congested, the heart nearly empty, and that there was no pigmentation anywhere;—could or could not such man have died of congestive chill, or any other form of malarial fever? A. He could not.

Q. Suppose that a man, after an obscure alleged illness of about five weeks duration, is, on a given day able to be up and transact business with his lawyer, and have his beard trimmed; is left by his doctor at ten P. M. on the same day, in such a condition as not to give any cause for alarm; and that at 11 P. M. is talking pleasantly to his attendant and eating a cracker, and in less than half an hour thereafter is dead; and that at the autopsy, made fifty-eight hours after death, the following conditions are revealed: A heavy indentation extending upwards and backwards from os hyoides to right around back of neck and on left side below the thyroideal cartilage,

- running upwards and backwards at an angle of about forty-five degrees ; post-mortem discoloration on posterior portion of body ; several small ecchymoses of skin of back and shoulders ; anterior part of right arm, small ecchymosis ; thorax, lungs and heart in natural position, except that the lungs are unduly inflated ; about four ounces of serum in bottom of left pleural cavity ; the same amount in right pleural cavity ; left lung, one pound and three-quarters ; bronchi congested and coated with mucus ; upper lobe congested and oedematous ; lower lobe still more congested and oedematous ; right lung two pounds ; bronchi congested and coated with mucus ; upper lobe at the apex several small fibrous nodules ; rest of upper lobe congested and oedematous ; lower lobe congested and oedematous ; heart healthy, weight fifteen ounces ; right ventricle contains a little fluid blood, not over one-half ounce ; left ventricle contains a little fluid blood, not over one-half ounce ; left auricle contains a little clotted blood ; stomach at the fundus, mucous membrane softened and partly destroyed by post-mortem changes ; pyloric end of stomach mucous membrane studded with small white spots, denoting chronic gastritis ; liver congested more than usual, normal color and consistency ; kidneys uniformly congested but otherwise healthy ; epiglottis, larynx and trachea congested and coated with mucus ; inner surface of dura mater on left side chronic hemorrhagic pachy-meningitis with a small extravasation of blood on the left side over the posterior portion of the parietal and anterior portion of occipital lobes ; pia mater of convexity normal, except discoloration over occipital lobes from blood ; brain neither congested nor anaemic, otherwise healthy ; and further, that at an inquest held five months after the first autopsy, the indentation on the neck was still distinctly visible ;—could or not death have
- 2026
- 2027
- 2028

been produced by any natural cause? A. It could not.

Q. Assuming the same conditions as stated in the last preceding question, what was the cause of death?

A. Hanging.

Q. Assuming that the body of a man weighing in the neighborhood of two hundred pounds, forty- 2029  
one years of age, having a full fleshy neck, about two hours after death is placed upon a board on its back, with the head raised upon a book and two pillows, and left in that position for about nine hours, and then placed in an ice box with its head elevated at an angle of about forty-five degrees, and left there for about forty-eight hours, and then removed and placed flat on a table—is it possible that a heavy indentation, commencing near the Adam's apple and running upward and backward at an angle of about forty-five degrees on either side to within less than two inches of meeting in the rear, could be pro- 2030  
duced by the changes in position stated? A. It could not.

Q. Does the furrow produced in the neck after suicidal hanging acquire its dark brown color immediately or at some period of time afterward.

Objected to on the ground that it is reopening the case; the Court sustained the objection, to which ruling the counsel for the defendants duly excepted.

*Cross-examination by Mr. Smith:*

I have intended to give an opinion about malaria 2031  
or chills in these questions; I don't remember the number of the question; I am sure it was in either of the questions; I can't tell you the sentence.

Q. Will you be kind enough to repeat the sentence, as well as you can remember it, in which the expression occurs in relation to malaria? A. I cannot repeat it.



Q. Can you give the substance of it? A. No.

Q. Have you given an opinion upon it? A. Yes.

Q. And cannot state the substance of the question? A. I don't know that I can; I don't remember where the word "malaria" was used, distinctly.

2032 Q. State the substance, as near as you can, of any sentence in any of these hypothetical questions, in which the words or the substance or subject of malaria was embraced? A. I don't think it was embraced in any but the last part of the question "Did he die of malarial disease?" I recollect that being in the question.

Q. And do you intend being understood as having given an opinion upon that question? A. Yes.

Q. Have you ever had a case of a man dying from malarial disease? A. No.

2033 Q. Then all you know about it is what you read or what you guess at? A. I don't guess at anything.

Q. Then it must be from what you read? A. Yes.

Q. Is that the extent of your professional skill upon this subject, what you have read and what you judge from what you have read? A. Yes.

I went to Binghamton a week ago last Friday,—I think it was a week ago last Friday.

2034 Q. Were you there engaged in pursuing and studying, or in any wise attempting to further or enlarge your knowledge, or other thing in pursuing the subject of malarial fever? A. I was; I remained there one day. I went down in the evening, and returned the next evening. I remember whom I saw down there; I saw Dr. Jackson, a Binghamton doctor; he does not act for an insurance company that I know of;—Dr. Mulherron; he was not an insurance doctor, so far as I know. And I saw Dr. Spencer, and the Coroner, Dr. Richards. That is all I think of now that I saw. I didn't see any dead bodies there.

GEORGE W. AVERY, recalled on behalf of the defendants, further testified as follows :

*Examined by Mr. Larocque :*

Q. Assuming that a man of forty-one years of age, who had previously enjoyed robust health, had been complaining for about three weeks, and was found on a Saturday morning in bed shivering, teeth chattering, surface clammy and cold, with the blood settled under his nails, and so continued for from one to two hours, breaking out into a cold sweat, with a feeble, whispering voice, and that this attack passes off without fever; that the second Friday after this occurrence, having during the day been up attending to business with his lawyer, having his beard dressed by a barber, he was left at about ten P. M. by his doctor in such a condition as to create no alarm; that at or about eleven P. M. he spoke pleasantly to his attendant, calling the attention of his attendant to his manner of eating a cracker, helping himself to one from a dish near his bed, and chewing it without difficulty; that within fifteen minutes the attention of the attendant was called to such man by a gasping noise; that this man was dead within a few minutes thereafter; that at the autopsy, held within fifty-eight hours after the death, the liver and spleen were found to be normal, except congested, the heart nearly empty, and that there was no pigmentation anywhere;—could or not such man have died of congestive chill, or any other form of malarial fever? A. He could not.

Q. Suppose that a man, after an obscure alleged illness of about five weeks' duration, is on a given day able to be up and transact business with his lawyer and have his beard trimmed; is left by his doctor at ten P. M. on the same day, in such a condition as not to give any cause for alarm, and at eleven P. M. is talking pleasantly with his attend-

- ant and eating a cracker, and in less than half an hour thereafter is dead; and that at the autopsy, made fifty-eight hours after death, the following conditions are revealed: A heavy indentation extending upwards and backwards from os hyoides to right around back of neck, and on left side below the
- 2038 thyroid cartilage, running upwards and backwards at an angle of about forty-five degrees; post-mortem discoloration of posterior portion of body; several small ecchymoses of skin of back and shoulders; anterior part of right arm, small ecchymosis; thorax, lungs and heart in natural position, except that the lungs are unduly inflated; about four ounces of serum in bottom of left pleural cavity; the same amount in right pleural cavity; left lung one pound and three-quarters; bronchi congested and coated with mucus; upper lobe congested and oedematous; lower lobe still more congested and oedematous;
- 2039 right lung two pounds; bronchi congested and coated with mucus; upper lobe at the apex, several small fibrous nodules; rest of upper lobe congested and oedematous; lower lobe congested and oedematous; heart healthy, weight fifteen ounces; right ventricle contains a little fluid blood—not over one-half ounce; left ventricle contains a little fluid blood—not over one-half ounce; left auricle contains a little clotted blood; stomach at the fundus, mucous membrane softened and partly destroyed by post-mortem changes; pyloric end of stomach, mucous membrane studded with small white spots, denoting chronic gastritis; liver congested more
- 2040 than usual, normal color and consistence; kidneys uniformly congested and otherwise healthy; epiglottis, larynx and trachea congested and coated with mucus; inner surface of the dura mater on left side chronic hemorrhagic pachy meningitis with a small extravasation of blood on the left side over the posterior portion of the parietal and anterior portion of occipital lobes; pia mater of convexity normal, except discoloration over occipital

lobes from blood; brain neither congested nor anæmic, otherwise healthy; and further, that at an inquest held five months after the first autopsy, the indentation on the neck was still distinctly visible; could or not death have been produced by natural causes? A. It could not.

Q. Assuming the same conditions as stated in the 2041  
last preceding question, what was the cause of death? A. Asphyxia by either a fillet or rope.

DEFENDANTS HERE RESTED.

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The evidence being closed, the counsel for the defendants moved to dismiss the complaint.

*First.*—On the grounds stated at the close of the plaintiffs' original case.

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*Second.*—That upon the uncontradicted evidence in the case, the answer of the said Walton Dwight, "Real Estate and Grain Dealer," to the following question contained in the application, viz: "2. (c) In what occupation has he been engaged during the last ten years?" was untrue, and constitutes a breach of warranty which avoids the policy in suit and precludes a recovery by the plaintiffs in this action.

*Third.*—That upon the uncontradicted evidence in the case the answer of the said Walton Dwight in the negative to the following question contained in the application, viz: "2. (d) Is he now or has he been engaged in or connected with the manufacture or sale of any beer, wine or other intoxicating liquors?" was untrue, and constitutes a breach of warranty which avoids the policy in suit and precludes a recovery by the plaintiffs in this action. 2043

*Fourth.*—That, upon the uncontradicted evidence in the case, the answer of the said Walton Dwight

2044 to the following question contained in the application, viz: "16. Has the party now, or has the same ever had any of the following diseases: Spitting of blood, bronchitis, consumption?" etc., so far as said answer related to spitting of blood, was untrue, and constitutes a breach of warranty which avoids the policy in suit and precludes a recovery by the plaintiffs in this action.

2045 *Fifth.*—That, upon the uncontradicted evidence in the case, the answer of the said Walton Dwight to the following question, contained in the application, that is to say: "6. (a) Whether the party to be insured is now or has been insured in this company; if so, state the number of the policy and the amount. (b) Whether in other companies; in which; for what amount in each. State exactly on what kind of policy?"—to the effect that he was insured in the New-York Mutnal (meaning the Mutual Life Insurance Company of New-York) by a fifteen year endowment policy for ten thousand dollars, and also to the effect that he was insured in the Connecticut Mutual Life Insurance Company on an ordinary life policy for fifteen thousand dollars—was, so far as the said answer related to each of the two companies named, untrue; and constitutes a breach of warranty which avoids the policy in suit and precludes a recovery by the plaintiffs in this action.

2046 *Sixth.*—That, upon the uncontradicted evidence in the case, the answer of the said Walton Dwight in the negative to the following question, contained in the application, that is to say: "6. (c) Whether an assurance has been applied for with this or any other company without having led to an assurance; if so, with which companies? And for what reason did the application not lead to an assurance?" was untrue in this: That at the date of the said application the said Dwight had already made appli-



cation for assurance on his life, to the following companies, that is to say :

(1) To the Connecticut Mutual Life Insurance Company,

(2) To the Mutual Life Insurance Company of New-York,

(3) To the Phoenix Mutual Life Insurance Com- 2047  
pany,

(4) To the John Hancock Life Insurance Com-  
pany,

(5) To the Penn Mutual Life Insurance Com-  
pany,

(6) To the Globe Mutual Life Insurance Com-  
pany ;

And that the said applications to the said companies respectively had not, nor had either of them led to an assurance at the date of the application to the defendant for the policy in suit ; that the said answer was untrue as to each and 2048  
every of the six companies, hereinbefore specified, and that the said untrue answer constitutes a separate breach of warranty as to pending applications in each of the companies designated, which avoids the policy in suit, and precludes a recovery by the plaintiffs in this action.

Said motion was separately made on each of the grounds stated, and the Court denied the said motion as to each of the said grounds, to each of which rulings and denials the counsel for the defendants duly excepted.

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The counsel for the defendants thereupon moved for an instruction to the jury to find a verdict for the defendants on each of the grounds separately, on which the motion to dismiss the complaint was based.

The Court refused so to instruct the jury, and the counsel for the defendants duly excepted sep-

arately to the said refusal and ruling of the Court on each of the grounds stated.

The Court thereupon charged the jury as follows :

2050 *Gentlemen of the Jury.*—Thirty days have passed since you were selected as men fit and competent to decide the questions of fact between these parties. Twenty-three of these days have been fully occupied in taking the evidence and listening to discussions of the facts. This case has been said to be, and it is an important and remarkable case. It is important in the amount of money involved in this particular issue, and more important in the effect that it may have on many similar issues yet untried. And it is also important as it involves a very serious question affecting the character and the reputation of several persons. It is remarkable  
2051 in the character of facts out of which it arises, but it is more remarkable, I think, in another aspect, and that is, though we have spent, as I say, thirty days in investigating this case, that there are not more than a half dozen disputed facts in the whole case. This may seem to you a remarkable declaration, but I think, gentlemen, when you come to review the evidence you will find that it is literally true.

But the importance of the duties which you have to discharge are not all measured by the fewness of the facts actually in dispute between the  
2052 several witnesses who have testified. Indeed, for that reason it calls upon a jury for the very highest exercise of their reasoning faculties, because that the facts in issue that are to determine which way this case shall go, are to be drawn by inference from the various undisputed facts that have been put into this case.

This action is upon a policy of insurance, dated on the 28th day of August, 1878. The application

is dated on the 22d day of August, 1878, and was signed by Walton Dwight. And I say to you, gentlemen, that the contract of insurance upon which this action is based, is made up of the policy and the application. The two must be taken and construed together, they forming the contract. And if any of the questions put by the application and submitted to you are found untruly answered by the assured, then, gentlemen, the plaintiff in this action cannot recover. Or, if the other fact that is alleged by the defence is found to be true, that this policy was procured with intent to defraud the company, and that that was consummated by the voluntary death of Walton Dwight, in that case the plaintiffs cannot recover. 2053

I said to you a moment ago that there are very few disputed facts in the case, and, as introductory to what I shall say, I will call your attention briefly to the only disputed facts which I regard as of much importance in this case. 2054

A great deal of time was occupied, and properly occupied, in putting into evidence the facts disclosing the history of Dwight, what he said, what he did, from the time he returned from Chicago until the time of his death. But, gentlemen, there is no dispute in this case as to what Walton Dwight said or what he did during the whole period of time. No witness has testified, in your presence, that Walton Dwight said the thing and another witness that he did not say it ; that he did one thing, and another witness that he did a different thing. And so you go down to the day of his death, and there is no conflict as to what the witnesses have testified to. You go down to the night of his death, and the same is true. The events immediately following his death are not disputed until we reach the autopsy. Three days after the death of Walton Dwight, an autopsy was held, at which were present fifteen physicians and several other persons ; six of these physicians have been called to testify 2055

as to the result of what they saw at that autopsy. There is very little dispute, indeed, gentlemen, except as to two or three facts, as to what these witnesses claim they saw. They all say they saw a mark, or indentation, or a furrow, or a crease about the neck, and they all describe it as being located  
 2056 in about the same position. The only difference between the witnesses in this respect is in the language by which they characterize it. Some say it was a heavy indentation ; others say it was a crease ; and others say it presented a particular appearance at the bottom, and others say it did not. This is about the only dispute in regard to the external appearance of the body ; and when you go to the internal appearance, they dispute simply as to whether there was a single scar upon the upper lobe of the right lung, and some slight disputes as to other things discovered in other parts of the  
 2057 body, but they are not very grave and perhaps not very material.

For the purpose of enabling you to discuss and consider this case, in an orderly manner, and that the various issues that you are to pass upon may be presented to your mind in the connection in which they ought, and in the connection in which they stand in this litigation, the Court has divided your duties into several different propositions, each one of which it is important that you should correctly understand and carefully consider. These propositions have been read in your hearing, and it is not necessary that I should now go over with  
 2058 them as a whole. I shall take them up, one by one, and call your attention briefly to the evidence, to the leading features of the evidence that bears upon each individual proposition, and then demand of you, upon your oaths, that you correctly and truthfully answer each and every one of the questions which are propounded to you.

Perhaps before proceeding to consider these questions, as the determination of this case depends en-

tirely upon inferences which you shall draw from different facts, I ought briefly to explain to you the process of the mind by which inferences are drawn from facts,—what I mean when I say to you that you must find and determine the facts in issue from the various evidentiary which have been put into the case. Every person, every day, and every hour, ascertains the existence of facts by drawing inferences from other facts, but sometimes jurors do not quite accurately comprehend what is meant when the statement is made to them, and I will illustrate by an every-day occurrence. If you pass by a field of grain that is growing, you know, you infer, from the facts that you see, that some one prepared the field for the grain and sowed the seed. If you pass by an orchard, you infer, you know, from the situation in which the trees are placed, that the hand of man planted them ; or you pass a field of wood, you know that it was not planted by the hand of man, and you ascertain the fact by the aid of your reason, by inferring that fact from the existence of these other facts that are familiar to you. 2059 2060

And so, gentlemen, in this case you must apply your reasoning powers to these undisputed facts in this case, and tell us what is the truth in regard to these various facts in issue.

The evidence, in describing Walton Dwight, discloses in a general way the manner of man that he was, and in what he had been engaged during his life. At the time of his death he was nearly forty-two years of age—would have been on the succeeding 20th of December. 2061

*Mr. Newton.*—Forty-one.

*The Court.*—Very well ; it is not material. I say now that if I make any misstatements in regard to any of the evidence, I hope you will call my attention to it at the moment, and it will not be regarded as an unpleasant interruption.



The early years of his life were spent in the lumber regions of Pennsylvania, and he continued in this business until 1862, in March, I believe, when he entered the service of the United States. He remained in that service until 1864, when he returned to Pennsylvania, and reengaged in the business of  
 2062 lumbering. Precisely what he did and to what extent he was engaged in this business and in what operations, the evidence does not fully disclose; but in the winter of '67-8, we find him at Williamsport, married, and boarding at the Herdic House, engaged in what was known as the Canada Lumber Company. Precisely how he was engaged, is not material; it is sufficient that the evidence discloses that there was a large tract of land in Canada which he had purchased, or in which he was interested, which he turned over to this lumber company.

In 1868, or about that time, he became a resident,  
 2063 as the evidence discloses, of the city of Binghamton, and from that time forward he resided at that place until his death. About that time he became possessed of some ten to thirteen acres of land in the suburbs of the city of Binghamton, which, in 1868, in July or August, the evidence does not disclose the precise date, he transferred to his wife by means of a deed through Lewis Seymour. From that time till 1873 or 1874, he was engaged in improving this land, and in building upon it. He erected a block of buildings consisting of eight brick houses, which was afterwards converted into the Dwight House, and also erected, as the evidence discloses, some forty  
 2064 or more dwelling houses upon this property. In May or June, 1874, he opened the Dwight House, and kept it as a hotel until March, 1877. In 1877 a petition in bankruptcy was filed against him by his wife and by other persons. It is claimed, and perhaps not disputed, that it was a friendly petition. Upon this petition he was adjudicated a bankrupt and his property, that which had not

been previously swept away by judgments and foreclosures in the Supreme Court, was swept from him.

*Mr. Larocque.*—If your Honor please, the evidence in the bankruptcy proceedings shows that no assets whatever passed to the assignee.

*The Court.*—That is true. And in the same year 2065 his wife filed a voluntary petition in bankruptcy, and she was adjudicated a bankrupt, and her property, whatever there was remaining, if any, which had not been swept away by the judgments and foreclosures that have been put in evidence, was taken from her. I think the evidence discloses that nothing was realized in that case by the assignee in bankruptcy.

After this he left Binghamton—it does not appear precisely when, but sometime probably in 1878 or perhaps it was in 1877, the evidence does not disclose the date—and went to the city of Chicago, and there engaged to some extent in operations in grain. In July, or sometime in the summer of 1878, 2066 Dwight returned from the city of Chicago to Windsor, the native town of his wife, and the place where his wife's parents resided, and where she had spent the summer. From that time until some time in October, the precise date not appearing, he spent his time in Windsor hunting and shooting, and in procuring these insurances. Sometime in October he went to the Spaulding House, in the city of Binghamton, with his wife, and was there engaged in perfecting these insurances, so far as the evidence discloses, and later was taken sick, and on the 15th of November died. 2067

During this period of time Dwight made some thirty-one or thirty-two applications to various insurance companies for insurance upon his life, amounting in the aggregate to about three hundred and ninety thousand dollars. The first application was dated on the 31st of July, and the last application on the 9th of September following. Twenty-

one of those companies, I believe, issued policies upon the applications, the aggregate amount insured being two hundred and fifty thousand dollars.

2068 Now, the defendants say that from the circumstances in which Mr. Dwight was placed, with no means at his command and no property within his control, that this transaction on his part evinces a design to defraud the companies. They say that the amount was excessive for any man, and further that he could not have anticipated being able in any possible manner or way to pay the premiums which would be necessary to keep these insurances in force, the amount being eighty-six hundred dollars annually.

2069 The plaintiffs on the other hand say that no unfavorable interference can be drawn from these facts. They have argued in your presence that Walton Dwight was not an ordinary man : that he had exaggerated ideas of his own importance, and exaggerated ideas of every matter of business that he was ever engaged in, and cannot be judged by the same rules by which you would judge other men. Of this, gentlemen, we will say more at a later stage of this summing up.

Having said thus much preliminary, I will now call your attention to the various questions that are to be submitted to you for decision.

2070 In this application, which I have said forms a part of the contract, several questions are propounded. I shall only call your attention to those which are put in issue by the answer. Question 2, sub-division c, — “In what occupation has he (Walton Dwight) been engaged during the last ten years?” That is the question. The answer given is, “Real Estate and Grain Dealer.”

Now, gentlemen, the defendants for one of their defences to this action assert that that answer was untrue within the intent and meaning of the contract : they say that this evidence discloses that during the ten years preceding this application that

his business had not been real estate and grain dealer, and that that was not a true and fair answer to the question ; they say, and it is true, that he testified before the Commissioner in Bankruptcy that since about 1868 or 1869, about the time that he made the settlement upon his wife, his business had been attending to his litigation and keeping the Dwight House, and that he had no other business. 2071

Gentlemen, whatever Walton Dwight may have said upon the matter is competent evidence, but it is not an estoppel ; it is not binding, and it is to be taken with the other facts in determining whether or not the answer was true ; it is not necessary for me to go over with great particularity the amount of real estate operations in which he was engaged ; I have called your attention already to the fact of the purchase of the Binghamton property and the improvements which were made upon it : the evidence further discloses that the account of the money expended for these various improvements was kept in his name, that the land was assessed to him, and that the rents amounted to a very considerable sum ; he and his wife lived together during all this time ; the evidence further discloses that during this period of time he owned a considerable quantity of land in Wisconsin, some ten thousand acres, I believe, and a small piece of land, I think, in Ohio, and he had some three pieces of land, the title of which stood in his name at the time of his filing the petition in bankruptcy. 2072

Now, gentlemen, the plaintiffs on the one hand claim that this answer gave a fair and true statement of the general occupation of Walton Dwight. The defence, on the other hand, claim that it was not true ; that his occupation during the ten years preceding the application had not been that of a dealer in real estate and in grain ; the term "occupation" has a definite meaning, and it means the general business in which a man has been engaged. 2073

It means his calling, his trade, his avocation. Now, gentlemen, when Walton Dwight made this answer, did he truly give his general occupation for the ten years immediately preceding this application? If you find that it was a fair and true answer within the meaning of the contract, you will write the word "yes" under the question. On the other hand, if you find that it was not a true answer—that his business was that of a hotel keeper, or any other business—you will write the word "no," and the plaintiffs will not be entitled to recover.

2074 The second question which it is alleged Walton Dwight untruly answered, is subdivision D of question 2, in the application: "Is he (Dwight) now, or has he (Dwight) been engaged in or connected with the manufacture or sale of any beer, wine, or other intoxicating liquors?" The answer is "No."

2075 The question to be submitted to you under this proposition has been divided by the counsel into two; first, whether he had been engaged in the sale of intoxicating liquors; and secondly, whether he had been connected with the sale of intoxicating liquors within five years immediately preceding August 22, 1878, the date of the application. The defence insist that this question called for a perfect and true disclosure of the fact that he was engaged in the sale of intoxicating liquors, as it is conceded that he was in this case. The defendants say that it makes no difference whether the sale was an incidental sale or whether it was his main business.

2076 They say that he should have answered that question, "yes."

It is not disputed that during the period that Mr. Dwight kept the Dwight House, that he sold liquors, and in this manner, he sold wines and liquors in bottles to the guests of his house, furnished it to the guests at their rooms or at the table. The evidence is, that he sold in no other



way and in no other manner. It appears from Dwight's evidence before the Commissioner in Bankruptcy, that when he went into the Dwight House he had a stock of wines, liquors and cigars amounting to from twenty-six hundred to three thousand dollars in value. The extent of the subsequent purchases is not disclosed by the evidence. 2077  
It appears also that he was licensed during this period by the United States and by the Excise Board of the city of Binghamton to make sales in this way and in this manner. But it is not claimed that he was ever in any other way or manner engaged in the sale of liquors.

The plaintiffs insist that this question is a compound one, and is incapable of an affirmative or negative answer, or of a truthful affirmative or negative answer. They say that if he had answered this question "yes," it would have been just as false as though he had answered it "no," because, they say, if he answered it "yes," he would have said he had been connected with the manufacture of liquors, which is in no respect true. 2078

On the other hand, the defendants say that it was not necessary for Walton Dwight to give a simple affirmative or negative answer to the question, to say "yes" or "no," but that there was room enough in the application and that the question fairly called for a full exposure of his connection with the sale of liquors as he had been connected with the sale,—that the answer should have disclosed exactly what he had done in this respect, and that the fair intent and meaning of the question as put, called for a full and perfect disclosure in that respect. 2079

Now, gentlemen, it is submitted to you as twelve sensible men, to say whether or not this answer that was given "no," is a fair and true answer, within the intent and meaning of the contract. You have heard the argument of the plaintiffs' counsel in

2080 this respect, that the fair intent and meaning of that question was simply to ascertain whether he had been connected with that business or engaged in that business, as a business, as an occupation, and that he was not called upon to disclose, and that it was not the fair intent and meaning of the question, that he should state, whether he had been incidentally and in connection with some other business, engaged in the sale of liquors.

Gentlemen, you have heard the evidence in respect to this question. I have gone over with it substantially—not in entire detail, and it is for you to say whether, taking the question as put, and the purpose for which it was put, it was fairly and truly answered. If you find that it was truly answered, you will answer the second and third questions in the negative, writing the word “No” underneath each. If you say they were not truly answered, you will write the word “Yes” under the second and third questions propounded to you, and in that case the plaintiffs will not be entitled to your general verdict.

The fourth question, and which is a question about which there has been more debate and in respect to which more evidence has been given, arises upon the sixteenth question propounded by the application. “Has the party (Dwight), now, or has the same ever had, any of the following diseases,”———\* \* \* “spitting of blood?”

2082 The defence alleges that this question was untruly answered. You heard the arguments that were addressed to the Court on the motion for a non-suit, in this respect, and you have heard the arguments of the counsel, who has addressed you in behalf of the defendants upon this issue. You heard what the Court said in reply to the motion for non-suit, the Court then holding, as it now holds, that it cannot as a matter of law, declare that that question was untruly answered from the evidence in the case.

Before proceeding to discuss this question I will read it and then call your attention to its meaning.

"Had Walton Dwight at any time prior to August 22, 1878, had spitting of blood resulting from disease of the lungs or other respiratory organs?"

Gentlemen, it so happened that this term "other respiratory organs" did not come into the case until the surgeons and physicians disappear, and no definition has been given to the jury as to what is meant by the term "respiratory organs," and I will briefly attempt an explanation of that. 2083

The organs of respiration consist of the lungs, the right and the left, and two tubes, proceeding one from each lung, called the bronchi, extending upwards, uniting in the chest and forming the trachea or windpipe, which extends upward in the front part of the throat to the larynx, which is situated at about the point indicated by what is known as "Adam's apple." 2084

So, gentlemen, the respiratory organs, the organs of respiration consist of the larynx, the windpipe or trachea, the two tubes called the bronchi and the lungs, and those are the organs and the only organs as I understand it included in the term of "respiratory organs," if with that definition the counsel are content.

*Mr. Larocque.*—With this exception—that the bronchi have small branches which extend everywhere through the lungs.

*The Court.*—When these two tubes which I have called bronchi, which unite and form the windpipe, come to and in contact with the lungs, they separate into innumerable smaller tubes extending all through the lungs, and I assume that when they reach that point they are included in the general term of lungs. 2085

The question that I am about to consider is a delicate one, upon which a good deal has been said in

the law books, and as I have prepared with some little care what I shall say to you in this respect, and instead of trusting to a general discussion of it I will read.

- The question now to be considered is whether either of these organs had been affected prior to
- 2086 August 22, 1878, with a disease called "spitting of blood," or otherwise stated, was the spitting of blood caused by a disease of any of the respiratory organs? If you find that it did not come from any of the organs of respiration, then the question put him by the application was not untruly answered within the meaning of the question, as interpreted by the special finding propounded to you. But if you find that the blood which he spat prior to August 22, 1878, came from any of the organs of respiration, then, gentlemen, it is of the utmost consequence that you carefully consider and rightly determine whether it was produced by some mere
- 2087 temporary cause, not serious in its nature or permanent in its effects, not impairing to an appreciable extent the strength or usefulness or natural action of the respiratory organ affected, and rendering it more liable to a recurrence of a similar or a like attack; or, whether the spitting of blood was a disease of itself within the meaning of the application, affecting any one of the organs of respiration; or, otherwise stated, was the spitting caused by a disease of any of the organs of respiration? If the spitting of blood was caused by an affection of any of the organs of respiration which was
- 2088 serious in its nature or permanent in its effects or impairing to any appreciable extent the strength or usefulness or natural action of the organ affected rendering it more liable to a recurrence of a similar or like attack; or if it affected the subsequent general health of the assured, then and in that case I say to you, that it was a disease within the intent and meaning of the application, and that the answer "no" to the question was untrue, and the

plaintiffs cannot recover. But if the ailment was slight, temporary in duration, and failed to produce any of the above or similar results, then, gentlemen, I say to you that it did not amount to a disease, the answer "no" was not untrue, and a recovery by the plaintiffs cannot be defeated by this answer. 2089

Now, gentlemen, in connection with this question, it becomes my duty to call your attention, briefly, to the leading features of the evidence bearing upon this question.

The defendant has proved by three witnesses, Forsman, Herdic and Mrs. Spackman, that in March, 1867, while boarding at the Herdic House in the city of Williamsport, Walton Dwight spat blood. Mrs. Spackman says that on one occasion she saw him raise mucus streaked with blood; Mr. Herdic says that he saw blood on one or two occasions in his room in a vessel, and he says on one occasion he saw as much, he thinks, as half a pint. 2090

*Mr. Gladding.*—It was Mr. Forsman who said he saw half a pint.

*The Court.*—It was Mr. Forsman said half a pint, and Mr. Herdic described the amount he saw as much less.

*Mr. Larocque.*—About three teaspoonsfull.

*The Court.*—These three witnesses also testify that they heard Dwight at various times, at about this time, speak of his having a hemorrhage. They say he was ill, and confined to his room, and under the care of a physician. A man by the name of Bartles and another by the name of Taylor and Mrs. Herdic testify that at about this time and place Dwight was ill: that he had a cough, and that they heard him say that he had a hemorrhage from the lungs, and some of these witnesses in describing his cough describe it as a severe and racking cough. 2091



Another witness sworn by the defendant, Seccomb, testifies that March 28th, 1876, he stayed over night at the Dwight House, and that Dwight told him that he had previously had a hemorrhage from the lungs. Mrs. Spackman also says that  
 2092 rhage from the lungs occurring at some previous time when in Michigan.

On the other hand, Mrs. Hoppes, the landlady of the Herdic House at the time spoken of by these witnesses, testifies that she knew Mr. and Mrs. Dwight, and that she knew Dwight was ill at that time from a hard cold, as she described it, but that she did not know that he spat blood.

That the insured did at this time spit blood I do not understand to be a disputed fact in the case. The plaintiffs only dispute the extent to which he spat blood, and say that the evidence does not war-  
 2093 rant you in finding that this blood proceeded from the respiratory organs, or if it did proceed from any of the respiratory organs, that it did not amount to a disease of the organs within the definition of the term "disease," given by the Court. Their evidence bearing upon this question consists of the testimony of a number of witnesses intimately acquainted with Walton Dwight—a brother-in-law and a sister and uncle and various other persons who have known him, some from infancy, and others for a great number of years. They testify that they never knew of his spitting blood and never knew him to have any difficulty with his  
 2094 lungs or respiratory organs. And that they never saw any symptoms of an affection of those organs.

The plaintiffs also say that the fact that Walton Dwight was a strong athletic man, of great vigor, with a large chest and a strong voice is evidence from which you should find that this spitting of blood he had upon that occasion, did not proceed from or arise from a disease of either one of the organs of respiration.

Gentlemen, I have referred briefly to the general characteristics of the evidence furnished bearing upon this question, as to the appearance of Walton Dwight preceding his death.

*Mr. Sessions.*—There is the fact that immediately after this occurrence at Williamsport he got up and went to Canada. 2095

*The Court.*—I do not call your attention to all the facts. I cannot. For if I should I should occupy just as much time as the counsel did in summing up, and if I went over both sides I should occupy as much time as both counsel, and that would be intolerable. I can only call your attention to the general features, to the general heads, leaving you to fill up the details.

Gentlemen, as to the evidence of disease of the respiratory organs furnished by the autopsy,—fifty-eight hours after the death of Walton Dwight, a dissection was had, as I have stated, and fifteen surgeons were present. Six of them have been brought here, and have given evidence as to what they discovered. And it will be my duty now to call your attention to what was sworn to in that respect. 2096

John Swinburne, Frederick Hyde. Daniel S. Burr, John G. Orton, Joseph H. Chittenden and Charles D. Richards have been called as witnesses, and testified with more or less particularity, as to what they respectively observed at the autopsy.

Now gentlemen, we are coming to an important question and one that you should give careful attention to, not only now but when you shall come to consider of your verdict. Dr. Swinburne says that there was a cicatrix, which is another name for scar, three-fourths of an inch in diameter, in the upper lobe of the right lung, and that underneath, and in the upper portion of the lung, there were nodules, and that the left lung, was held down somewhat by adhesions. This, gentlemen, I believe 2097

is all of the evidence, or substantially, all of the evidence given by Dr. Swinburne on the condition of the lung in respect to disease.

*Mr. Larocque.*—He said there were small fibrous nodules and cicatrices.

2098 *The Court.*—Dr. Hyde says he saw no scar but that there were two or three nodules elevated one-eighth to one-fourth inch above the surface of the lung, and that in his opinion they were not the result of the pulmonary phthisis. Pulmonary phthisis means a disease, a destruction and wasting away of the tissues of the lungs. Phthisis means a wasting away. Pulmonary refers to the lung.

Dr. Chittenden says that there were no scars in the lungs, but that there were three small nodules on the surface of the lung each of the size of a split pea. He says that one or more of them were cut into and that their substance was gristly or cartilaginous in character. He further says that nodules do not necessarily indicate pulmonary disease.

2099

Dr. Orton says there were no scars, but there were three nodules on the outer surface of the upper portion of the right lung each about one-fourth inch in diameter standing separate from each other and forming a triangle which could be covered by a large copper cent. He said they had the appearance of warty excrescences, and that the tissues around and between them seemed as healthy as the other parts of the lung. All of the experts agree that a scar or cicatrix indicates a previous injury to the tissues of the lungs which has healed, and therefore, gentlemen, it becomes important in this connection to determine which of these physicians observed accurately and which has testified to the fact as it existed. One of them testifies positively to the existence of a scar giving its dimensions and its location, and all the other physicians testify that there was no scar excepting one who says he saw none. Which gentleman described the fact as it actually

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existed? It is important because if it be true that there was a scar there, it may have an important connection with the previous spitting of blood with which Mr. Dwight was afflicted while at Williamsport. If there was a scar there and if it was from the wound indicated by that scar that this spitting of blood proceeded, then Walton Dwight had been 2101 afflicted with a disease of the respiratory organs called spitting of blood, within the meaning of this application, and under the contract, the plaintiffs cannot recover.

But if, on the other hand, there was no scar, then of course there should not be any connection, there would not be any inference to be drawn as between that condition of the lung and the spitting of blood.

Dr. Wood of Philadelphia was not present at the autopsy. He uses the word "nodules" as meaning a scar, and he says that it indicates 2102 a destruction of the tissues or a previous ulceration.

The word "nodules" and the word "cicatrix" are used as synonymous, as words meaning the same thing, and indicating the same thing, by Dr. Wood.

Gentlemen, Dr. Lee of Oxford, who was not present at the autopsy, in speaking of the indications described says that he thinks that blood might have proceeded from ulceration indicated by nodules. Perhaps a fair interpretation of that expression, and I have taken it from the minutes, is that in his opinion nodules and scars are 2103 substantially the same thing and indicate the same previous condition of the lungs.

The other physicians were not called to speak in respect to what the nodules indicated,—neither Swinburne nor Hyde nor Orton nor Burr. You simply have a description of those nodules as given by them.

One or two of the witnesses say that the

2104 nodules were cut into, and that they were gristly or cartilaginous in character, and those who speak of them in this respect say that they extended above the surface of the lung like a wart from the hand. Dr. Hyde says that he thinks they did not extend down into the tissues of the lungs, and carried the idea that they sprang from it.

Gentlemen, we are without—notwithstanding all the medical science here—we are without more definite knowledge as to what these nodules mean, except in so far as testified to by Dr. Wood. Three physicians say that in their opinion they do not necessarily indicate pulmonary disease. And Dr. Orton and Dr. Chittenden say that in their opinion, looking at these nodules as they saw them, that they did not indicate a previous destruction of tissues at that point, or pulmonary phthisis.

2105 *Mr. Larocque.*—May I call your honor's attention to what Dr. Wood said in that connection?

(Minutes shown Court.)

*The Court.*—Gladly sir. I think this means as I have already said.

*Mr. Larocque.*—The testimony shows the connection.

2106 *The Court.*—“The fibrous nodules in the lung is almost invariably the cicatrix of an old ulceration; ulceration of the lung is a common cause of hemorrhage of the lung, and having therefor a history of the common cause of hemorrhage from the lungs and a history of the presence of a hemorrhage, the presumption is that the cause—my opinion is that the effect has followed from the cause and the ulceration been productive of hemorrhage.”

*Mr. Newton.*—We wish your Honor to charge



that he is not to deal with presumptions, but that is for the Court and jury.

*Mr. Gladding.*—And that he did not see the nodules.

*The Court.*—I shall have something to say later, gentlemen, in regard to this evidence, if I do not 2107 forget it.

These, gentlemen, are the facts, or rather a synopsis of the facts bearing on the question whether or not the spitting of blood proceeded from a disease of any one of the organs of respiration.

*Mr. Newton.*—If I am permitted, I will make a single suggestion. Your Honor said that Mr. Forsman spoke of the pint of blood, and I wish to call attention to the fact that in his further examination he said that he thought it was a pint of fluid.

*The Court.*—You did not understand me to say, 2108 and you did not understand Mr. Forsman to testify, or these defendants' attorneys to assert that there was a half pint of clear fluid blood seen by Mr. Forsman at any one time.

*Mr. Larocque.*—That we understood to be his testimony.

*The Court.*—Well, if he meant to swear to that it ought to go somewhat to his credibility, because a full half pint of fluid blood, raised from the organs of respiration, would leave a man, I think— 2109 but it is for you to say—in a very critical condition. Would it be possible that a man could discharge that amount of clear fluid blood from the organs of respiration, and within the course of two weeks or three weeks be able to leave his room and his residence and engage in his usual vocation?

But, gentlemen, that is not a fair criticism, as I understand the evidence. Because I do not under-

stand Mr. Forsman to intend to swear that this half pint was clear blood, but that there was a half pint of fluid which looked very red and appeared like blood.

2110 *Mr. Russell.*—That is what he said on cross-examination, as your Honor stated.

*The Court.*—If I make any mistake, as I have stated, if counsel do not correct me, you must correct me when you get in your jury room.

2111 Now, gentlemen, I come to a question of perhaps some importance and not without its difficulties. The counsel for the defense have asked you to presume that because Mrs. Dwight was not sworn in this connection that the evidence that she would have given, had she been called to the stand, would bear strongly against the plaintiffs' case. And they have also made some suggestions in regard to the objections which were raised to Doctor Doane's being permitted to testify. All of these questions have received consideration in times past by the Courts; it has been settled, I think definitely settled, that a party may refuse to remove the seal imposed by law upon the lips of his medical adviser or of his attorney, and refuse to permit him to go on the stand and disclose what he knows in favor of or against his case, and that no presumption shall be raised against a party so acting. And that precise question was raised and determined, gentlemen, in a case in the House of Lords, in the highest English tribunal, and it has never been disturbed. But as to what inference shall be drawn as to the failure to swear Mrs. Dwight, the rule of law as I have extracted from the books is this: if the plaintiffs might have produced cogent and direct evidence in support of their contention, but content themselves with offering evidence of weaker or less satisfactory character, you may, if in your judgment the circumstances warrant it, infer that the evidence which might have been given would

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not be favorable to the plaintiffs' case. But you should be cautious in the application of this rule, and cautious as to the weight you give this presumption, because it is said that it may happen, that it has happened, that where a number of witnesses have testified to circumstances, that the party though knowing them to be untrue, has felt himself or herself, by his or her evidence, alone unable to refute the evidence given and shrank from the ordeal without being influenced by having in his or her possession evidence unfavorable to the case. 2113

Much has been said in the case about the absence of the hotel keeper, Spaulding, and the absence of one or two other witnesses. I will say in this connection, though it has no application to the branch of the case I have just been discussing, that the failure of either side to swear a witness who is equally within the reach of the other side, and the witness not standing in the position of a party or an interested person cannot be the subject of unfavorable presumptions against either side. 2114

Gentlemen, the next question—and there are but two more though—I should call your attention to; the fifth interrogatory: “Was the ailment of Walton Dwight, at Williamsport, in March, 1867, a mere temporary ailment, from which he recovered?”

Gentlemen, I am asked to charge, in respect to this, that if this was a mere temporary ailment from which he recovered that the plaintiffs are entitled to recover. 2115

That is true, if it did not amount to a disease. But if the spitting of blood resulted in a destruction of any portion of the tissues of the lungs; if it became, as I repeat, a disease within the meaning of the term as I have defined it to you, the fact that he subsequently recovered from it would not entitle the plaintiffs to recover—if the disease in this respect had existed. But if it was a mere ailment,

not amounting to a disease, then, notwithstanding that, the plaintiffs are entitled to recover so far as this question is concerned.

2116 But it is quite unnecessary for me to go over the evidence bearing upon this fifth proposition, for it has all been referred to in discussing the last preceding question as to whether or not he had had spitting of blood.

The sixth proposition or question is : " Was the policy of insurance on the life of Walton Dwight in suit in this action, obtained by him with the pre-conceived design and intent to defraud the defendant ?"

The seventh is : " Did Walton Dwight die by suicide ?"

2117 The great bulk of the twenty-five hundred pages of evidence that has been taken and piled upon these tables bears more or less directly upon these two questions, and perhaps it may be regarded as one of the very important questions of fact in this case; all of them are important, for a decision of any one of them one way or the other may affect fatally the right to recover. The evidence is, as I have already stated, that between the 31st day of July, 1878, and the 9th day of September, 1878, that Walton Dwight filed applications to some thirty-one or thirty-two insurance companies, calling for an insurance upon his life for three hundred and ninety thousand dollars, or about that sum. That upon these applications, insurance policies were issued by twenty-one companies amounting to two  
2118 hundred and fifty thousand dollars.

The counsel for the defendants say that the very amount of insurance applied for, taken in connection with the means of the man and his circumstances and condition in life, is a cogent fact from which you are to infer that the applications were not made in good faith. Also, that the amount of the policies obtained called for an annual expenditure of eight thousand and six hundred dollars a

year, in order to keep those policies in force; and the further fact, that these policies were all applied for, or nearly all applied for (or a majority of them), upon the quarter yearly plan, and that Dwight died before the second quarter's payment became due, is strong evidence from which you should infer that this insurance was not honest, 2119 and that Dwight, in pursuance of a preconceived design to obtain this insurance, suffered or effected his own death to the end that his wife and child and beneficiaries named in the will might reap the benefit of the insurance.

Gentlemen, the evidence bearing upon this question, or some of it is, that at this time, as I have already stated, Dwight was insolvent, his wife was insolvent, and it is not claimed that he had any means with which to pay these insurance premiums except such as he might be able to earn. It is in evidence here that Dwight 2120 said that during the period that he was in Chicago he made and lost a large sum of money. There is no direct evidence bearing on the question as to how much he was capable of earning or how much he had earned. The plaintiffs say that it is a matter of no great consequence, for they say that Dwight had an exaggerated idea of his own ability, and his own powers, and capabilities, and might have honestly believed that he would in the future, by speculation or otherwise, be able to earn a sufficient sum to keep up these premiums and support his family. The defendants say that this is an unfair inference, that the facts do not justify any 2121 such conclusion.

As I say, these policies were obtained between these dates, at some time in the month of September, the date does not appear when Walton Dwight made his last will and testament. This will has been read in evidence, and read to you two or three times, and I shall not go over with it in detail. The counsel for the defendants say that from the lan-



guage of that will, from the circumstances under which it was made, that it is evident that it was made by a man anticipating immediate death ; and they say that it was but a part of the general scheme he had formed in his mind, to procure these policies and defraud these companies and this defendant.

- 2122 They argue that the fact that Walton Dwight included within the terms of this will bequests of a dollar and of two dollars, and of various small sums, to various creditors of his—that it indicates an idea existing in his mind that he was not to live to pay them, and that they were to be paid out of the avails of these insurance policies, and in no other way ; and they say that in the month of September Walton Dwight was not ill, that his illness commenced at a later period, and that there was nothing in his physical condition and surroundings that could have fairly lead him to apprehend that he was in danger of death, unless he premeditated death ; in other words, self murder.

- 2123 But the plaintiffs say that in another part of this will, that he speaks of the hope that he may be able to pay these debts himself, that he intends to pay them, and they say that taking the whole will together, that it cannot be fairly inferred that when that will was written that it was written under the apprehension of an early death. And they say, or perhaps would have said, that every will refers to and speaks of what is to be done after the death of its maker, and that its very language necessarily infers an apprehension of death. Whether this
- 2124 will, gentlemen, is evidence bearing one way or the other upon this question, as to whether this policy was fraudulently obtained, is a question entirely for your determination : I only state the facts as they are proven, and it is for you to draw the inference. The evidence is, that during the month of September and October, Dwight was in usual good health, and engaged in hunting in the Susquehanna Valley at Windsor. That some time in the month

of October he returned to the Spaulding House with his wife, and engaged rooms there, the rooms in which he died. That some time during the month of October he was afflicted with chills, and with fever. The various symptoms that he had have been described by the witnesses who saw him, Mrs. Owen, Mr. and Mrs. McDonald, and Mr. Downs and Mr. Pine, and other witnesses who saw him during his illness. 2125

Dr. Porter went to Binghamton and saw Dwight shortly before his death, and has described to you the indications of sickness that he saw, he tells you what opinion he arrived at at the time.

Now, gentlemen, the plaintiffs say that Dwight sickened and died from natural causes, and that they have given symptoms which existed indicating that he was afflicted with a disease of an alarming character. That he grew gradually worse, that he had severe chills, and that in one of these chills he died. They produce in support of this theory the persons who were about his death bed. 2126

*Mr. Russell.*—Do the plaintiffs claim he died of that chill? I heard no such claim in this case, and the counsel said yesterday there was no question of malarial chill in this case.

*The Court.*—He said no question of malarial chill.

*Mr. Larocque.*—I do not know that they say that there is any cause of death.

*Mr. Gladding.*—The witnesses say he had the same symptoms he had before. 2127

*The Court.*—That is a question for you, but I understand that was the claim from the evidence that he died from a chill. The witnesses you will recollect who were present at the time of the death and immediately preceding the time of death attempt to describe the condition of Dwight, and it is for you to say if it becomes material whether

he died from a chill or from some other cause—some other natural cause.

2128 During the night or at the time Dwight died a man by the name of Charles A. Hull was sitting up with him and acting as watcher or nurse. He testified that Mrs. Dwight and her sister left the room at about 9 or half-past 9 o'clock, and the physician about the same time—I may not state it precisely correct according to their evidence, but it is near enough for your purpose. That he seated himself by the door leading from the bed-room to the sitting room in a seat where he had a full view of Dwight. That after a little while Dwight called for a drink and he gave him a drink of ice water, and that later Dwight ate, or attempted to eat, or put in his mouth, a cracker. That he heard nothing further from him <sup>until</sup> a while afterwards and not far from 11 o'clock he heard him call "Charlie," and he

2129 went to his bed side and found him struggling for breath, breathing with difficulty, he was sitting or rather bolstered up by three pillows lying under his head and back; Hull attempted to relieve him and was unable, touched the electric bell and ran across the hall; he knocked on the door of Mrs. Dwight, and summoned her to the room. That when he returned Dwight was insensible and continued to breathe strugglingly and in a few minutes died.

*Mr. Russell.*—I think he does not state that he rang the bell until he came back from Mrs. Dwight's room.

2130 *The Court.*—Very well, it is not very material as to the order of time, but it is perhaps well that we should be accurate about it, at any rate Mrs. Dwight and her sister were summoned and entered the room, and I think the fair import of the evidence of the sister is, that she is uncertain whether there was any life in Dwight when she reached the bedside.

*Mr. Russell.*—She says distinctly there was not a sign of life.

*The Court.*—So far as she saw ; that she did not immediately enter this inner room.

Another witness by the name of Lee, who was the porter at the hotel, says that he was called and that he reached the bedside before Dwight was dead, that brandy was administered to him, and that he went for a pail of hot water, and that his hands were put into the hot water and bathed by Mrs. Dwight, and that various restoratives were applied, but without any effect. He says that he seemed to swallow ; that the brandy, or whatever it was, was turned into his mouth and disappeared. Notwithstanding, he lived but a few minutes. 2131

Gentlemen, this is the evidence of the plaintiffs in this respect.

The defendants' theory of this case is that the evidence of Mr. Hull is not true, that he is a perjured witness, and more, that he contributed to the death of Walton Dwight, either by directly effecting the result with Dwight's consent, or else sat willingly by and saw Dwight do it himself. And the theory of defence is that this death was effected by strangulation with a cord or fillet, or something put about the throat that compressed the organs of respiration so that air was not allowed to enter the lungs. Upon this question a great deal of evidence has been produced. Of course there is no direct evidence as to what occurred that night except that to which I have called your attention, bearing upon this question as to whether or not he died from strangulation. 2132

Mr. Lee testifies that he assisted the undertaker on the night in question in laying out the body or preparing it. That he assisted in washing the neck of Dwight, and that there was no indentation or crease in or around the neck. 2133

Mr. Elisha Ayers, the undertaker who was called,

testifies that he laid the body out with the assistance of Lee and another, and that there was no indentation and no mark around the neck.

2134 Peter Van Vredenburgh testifies that he reached the room before twelve o'clock, between half-past eleven and twelve, I think he said, and that he saw the neck, and that there was no mark, discoloration or indentation on the neck or on either side of it.

2135 Ayers testifies that the body was laid upon a board, and two pillows and a book, or else two books and a pillow—and it is immaterial which—were put under the head and the head raised to an angle of something like forty-five degrees as compared with the remainder of the body : that it was left in that position until the next morning, and that it was then, about nine or ten o'clock, placed in an ice-box, the head being left in about the same position, with this chin-rest that has been described, which consists simply of two pieces of iron or steel with a comparatively flat surface held together by two elastics, one of the rests being under the chin and the other on the top of the head, for the purpose of holding up the jaw. In that condition the body was left until November 18th, when the autopsy was held.

2136 Dr. Swinburne testifies that at the autopsy he saw on the right side of the neck an indentation which began at the upper end of Adam's apple and extended backward at an angle of about forty-five degrees towards the back of the neck, and that there was another on the left side beginning at the lower end of Adam's apple and extending backward at the same angle, but not meeting by an inch and a half on the back of the neck. The indentation was three-eighths of an inch deep, round at the bottom and having a leathery appearance. This is the only witness called by the defendants who was present at the autopsy—I do not mean the inquest. The inquest occurred in April afterward.



I have called your attention to the evidence of Mr. Van Vredenburgh and of Mr. Ayers, as to what they saw about the neck before the autopsy. Dr. Hyde, who was present at the autopsy, says that there was no crease or indentation or furrow in his neck, but that there was a fold in the skin. Dr. Burr says there were folds on the side of the neck which were those of a fleshy neck, which had been chilled in one position, and bending it a little backward caused an indentation or wrinkle. "I saw it plainly but I did not feel of it. There was no parchment appearance about it." 2137

Dr. Chittenden says there were folds across the neck without any unusual feeling; it was simply a fold opened by throwing the head backward after the body had stiffened; and it was not discolored.

Dr. Orton says there was a fold in the skin of of the neck and tissues thereunder, to be seen when the head was thrown forward, but more plainly when the head was thrown backward; it did not feel like parchment, and was not discolored or purple. 2138

Elisha Ayers, the undertaker, was present at the autopsy, and he testifies substantially to the same state of facts.

In April, an inquest was held over this body at which were present, Dr. Sherman and Dr. Bridges, the only physicians who were present who were sworn by the defendants.

*Mr. Russell.*—Dr. Swinburne was present.

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*The Court.*—Yes, Dr. Swinburne was present at the inquest.

They testify that at the time, notwithstanding the period that had elapsed, there was the indentation on both sides of the neck plainly to be seen, and that attention was called to it. And this man from Franklin, Albert C. Hitchcock, testifies he was there reporting for one of the daily papers, and

that he stood six or eight feet away from the body, and saw one side of the neck, and that he saw plainly a distinct furrow in the neck, the skin of which was darker at that point than was the surrounding skin. He says it was a noticeable groove or mark.

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*Mr. Russell.*—Mr. Freeman was also present.

*The Court.*—Mr. Nat B. Freeman was also present at that inquest, and he says that he saw the groove, and put his finger in it. Some of the witnesses testify they put their little finger in, and others their fore finger, and felt it, and say that the groove was plain and very distinct, both to the sense of feeling and to the eye.

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It is important, of course, in this connection to determine whether or not this groove existed, and whether what they saw was a groove, indentation, or furrow in the flesh, or whether it was a mere fold in the skin caused by the condition of the neck and the bending of the head upwards and forwards and backwards as described by the witnesses—because very much of the evidence for the defence bearing on the question of suicide rests upon whether or not there was an indentation around the neck. It lies at the very foundation of their theory of strangulation, for they do not offer evidence tending to show, and they advance no theory that Dwight died from any other cause than a natural one, unless by asphyxia produced by strangulation.

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Gentlemen, which of these witnesses testified truly in this respect? Which has the best means of knowing and observing, and which has reported the fact, as it actually existed, correctly from the witness stand?

This, gentlemen, is about all of the evidence that bears directly upon the question as to the means and manner of this man's death, excepting the internal evidence developed at the autopsy, or the

evidence of the internal condition of the body as developed by the autopsy.

The counsel for the parties did not go over the medical evidence in this respect, and I shall content myself by referring to it in a very general way. The doctors testify that they discovered no sufficient cause of death; that the organs were healthy; that the brain was healthy; that there was a clot of blood upon it, but insufficient to cause death; that the liver and the various internal organs of the body were all in a healthy condition, excepting the lungs, which I have described, and that there were slight adhesions. And they have also described the condition in which these organs were found in respect to blood, and whether congested or not. And from these, a hypothetical question has been put to various medical experts, and by that hypothetical question these experts have been asked to say whether or not, in their opinion, Walton Dwight died from asphyxia. Each one of them has testified that, in their opinion, he died from strangulation. 2143 2144

It is proper at this point that I should call your attention to the theory and to the value of expert evidence. When facts which are to be investigated by a Court are so obscure that they cannot be readily known and understood by persons not possessing special knowledge of the science or subject under investigation, it is competent to call to the stand experts to give evidence, of two classes. First, the experts may give evidence of the particular facts relating to their science, that they observed on any occasion. An ordinary person might observe the same facts and they would not strike him, or would not impress him, and he would not be able to repeat or describe to the jury the facts that actually existed. When experts speak of facts which they observed with their senses, they stand on the same plane as other witnesses, and are to be judged by the same 2145

rules. But, in addition to this, in cases where the facts before the Court are of such a kind that the Court or jury, from lack of special training, are unable to determine what they mean, and what conclusions should be drawn from them; the expert may give his opinion, by way of instruction, to the Court and to the jury. As to the meaning of the fact, and for the purpose of reaching this question, and ascertaining the opinion of the expert, what is called a hypothetical question is always put to the witness, and that I must explain.

A hypothetical question assumes the existence of certain facts stated in the question, and it can only embrace facts upon which some evidence has been given, and the expert is then asked to say whether, if those facts embraced in the question actually exist, what is his opinion in respect to them. And so, such a question was put in this case.

This hypothetical question assumes the existence of certain facts which the physicians testify to as having existed at the time of the autopsy, and it also embraced the assumption—assuming that there was found about the neck, around the sides of the neck, this indentation described by the physicians; they were then asked as to what they believed was the cause of death. They all said they believed that he died from asphyxia, from strangulation, by means of a rope or fillet around the neck.

Gentlemen, how much those opinions are worth depends, first, upon whether the particular facts assumed within the hypothetical question actually existed. First, did the important fact of this indentation around the neck, exist? Dr. Porter, when a question was put to him by the Court, said that even though you strike out the indentation and leave the neck in a natural condition, that he still should say that the person died from asphyxia, from strangulation, effected by some other means. Whether that theory—that answer is entirely in harmony with the other medical evidence, especi-

ally the evidence given by Dr. Flint, as to the effect that he would expect to be produced by a fillet or cord arresting not only the respiration, but the circulation of blood, is a question for your consideration and not for me. The other physicians were not asked this question, as to what their opinion would be if that fact was left out of the case. 2149

*Mr. Russell.*—I will call your Honor's attention to the fact that Dr. Wood answered that question also in the early part of the case.

*The Court.*—If he did I do not remember it, and as the plaintiffs do not deny it, I will assume it is true.

*Mr. Gladding.*—We do not remember whether he did or not.

*The Court.*—Dr. Hyde, in speaking of some of the conditions assumed in this hypothetical question, testified that he saw no amount of bloody mucus or bloody serum in the thorax, and he testified, and so did Dr. Orton, that he did not observe some of the conditions assumed to exist in the hypothetical question. The other physicians present at the autopsy, testified that they did exist—among them Dr. Swinburne. Gentlemen, you will bear in mind this, that many of these experts, Dr. Avery and Dr. Porter, and Dr. Wood and Dr. Flint (so far as he spoke on the question at all) never saw these conditions assumed in the question, and by their answering the hypothetical question, it affords no evidence that they did or did not exist. 2150  
The evidence as to whether the conditions assumed in the question existed or not must be taken from the witnesses who were present and saw the condition of the body at the autopsy. 2151

As to the value of expert evidence when it rests in the opinion of the experts only, Courts recognize the value of the evidence of persons who are distinguished in the science in respect to which they



testify. In many cases they could not ascertain the facts in any other way. And if the witness who gives his opinion comes to the stand without bias, without prejudice, without any theory which he is interested to support, and testifies candidly as to his opinion upon any particular question, it is entitled to respect and to weight. But opinion, evidence coming from all classes, is evidence that should be most carefully scrutinized by every tribunal at which it is offered. When a man testifies to his opinion he testifies to no fact. He testifies from that which springs from within, and is practically amenable to no tribunal except his own conscience. It is hardly possible to convict any man of perjury when he testifies as to his mere opinion. And so I say it is important to look with care upon each witness who testifies to a mere opinion. The most of these witnesses who testified in this respect say that they have no interest in this case, that they have had no hand in its preparation, that the facts were presented to them in advance, as they must be (because they could not be called without counsel knowing what they would swear to); that they gave their opinions and came to the stand and testified to them.

But, gentlemen, there were two experts, men distinguished in their profession, whose reputation I assume is high, who came and testified that during the trial of this cause they had sat here with counsel, suggested subjects for examination, questions to be put to the witnesses by the defendants' counsel. They testified that they had been consulted in advance of this trial, that they had framed questions, consulted with the other experts and had acted in this capacity in this case. Gentlemen, it is not the province of this Court to erect a standard by which to govern or gauge the conduct of members of another profession, but I do say, that when a witness testifies to his mere opinion formed in this way, and under such conditions, you have

the right to regard it, and you should regard it, with great suspicion. But, gentlemen, what I say in this respect is not to control you. You are to judge of the credibility of witnesses, and not the Court, and you have a right, and it is your duty, to disregard what I have said upon this point, if it does not accord with your own judgment with re- 2155 spect to these two witnesses. I ought to caution you that the strictures which I have made upon these two witnesses, must not affect the defendants' case in any other respect. It goes simply to the credibility of these witnesses within the range of facts or opinions to which they testified. You cannot take it into account in any other connection than this: and you must not allow any opinion that you may have in respect to these two witnesses or the position they occupy, to prejudice the case.

I am asked to charge in respect to the credit that should be given the witness Hull, "that in weighing the testimony of a witness, the jury are entitled to take into consideration, on the subject of his credibility, his own declarations as to his belief or unbelief in the existence of a God and a future state of rewards and punishments." That, gentlemen, is a proposition that cannot, as I understand the law, be charged either in the affirmative or in the negative. And I must proceed to a little explanation in this respect. 2156

By the law of this State, any person, no matter what may be his religious belief, or whether he has any religious belief, is competent to testify as a witness. The law prescribes no forms of belief in this respect. A christian may come to the stand and swear on the gospels, a Jew by the old testament, the believer in any other form of religion may testify in the form that is most binding upon his conscience. The man who believes in the injunction that you shall swear not at all, either by heaven or by earth or by Jerusalem, is permitted 2157

to stand here and hold up his hand and say "I do solemnly, sincerely and truly declare and affirm that the evidence I will give between A. B. plaintiff, and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth."

2158 A witness who has sworn or affirmed in any of these forms is as competent as a witness, as the most devout believer who has taken the oath in the most solemn way upon the Book.

But, gentlemen, this request goes a little further. They say that I ought to charge that his belief or disbelief in the existence of a personal God and a future state of rewards and punishments, should be taken into account. Gentlemen, I decline to charge that, and I say that the law has no standard by which it measures what a man should believe in these respects. Before a man can believe in the existence of a personal Deity, which was the language of the witness, he must be able to form a conception of his personality, must be able to say what it is like—what its attributes are. And, gentlemen, the law does not demand any such formulated condition of belief as this, before a witness shall or shall not be deemed credible. The witness, in speaking of future rewards and punishments, stated that he did not know, as I recollect it, whether he believed in a future state of rewards and punishments, but he did say that he believed there were punishments other than the punishments prescribed by the law.

2160 Gentlemen, if a witness should testify that the oath or the affirmation which he had taken, or was about to take, had no binding force upon his conscience—that he only believed it binding so far as the law makes it binding—that would be a fact, in my judgment, that the jury should take into account as affecting the credibility of the witness. But if the witness recognizes the obligation of the oath under the law, and recognizes its moral obligation, and believes that the oath or affirmation

which he takes binds his conscience to testify the truth, and that moral penalties will follow in case of failure, those are the only considerations to be taken into account, as affecting his credibility in this connection.

I am asked also to charge that even though you find that Walton Dwight originally procured this particular policy with intent to defraud the defendants, that unless that intent was consummated by suicide that the plaintiffs are entitled to recover. Whatever I might have thought about that question (had the issue been different) after an examination of the answer in this case, I say upon this question, which is the sixth, that the defendants are not entitled to a verdict on this ground, unless you find that the fraud was consummated by the willing death of Walton Dwight by self murder—by suicide. 2161

Gentlemen, I have gone over this case—over all its principal features—and called your attention to the facts so far as I deem it my duty to do so. You have now the responsibility of deciding this case upon your oaths. You will never sit in a case more important than this, involving more weighty issues and weighty questions, unless it should be your misfortune to be called at some time to decide upon the question of the life or death of some person charged with and placed on trial for a capital offence. 2162

When you took your seats you each took an oath which ought to be, and I have no doubt is, binding upon your consciences, to decide this case solely upon the evidence and upon no other consideration. And, gentlemen, in considering as to what the facts in this case prove, you are not to stop and consider for a moment that a woman—a widowed woman—stands here on one side and a corporation on the other. They are the same in law; they have the same rights. A corporation is created by the law of the State, which is wiser than. 2163

we, for wise and good purposes, and what the witnesses have testified to—whether it is true or false—is in no wise affected by the fact that one of these parties happens to be a corporation. The truth would be the same, though the defendant was a private citizen. And it is your business to exclude  
 2164 from your minds all considerations that one of these parties is a private citizen and the other a corporation.

And, gentlemen, you must exclude from your minds another consideration. It is often said that when an action is brought upon an insurance policy—fire or life—that the defendant ought to pay, unless the plaintiff, or the plaintiff's agent or representative has untruly answered some of the questions relating to conditions in respect to which the loss occurred. And the argument would be, in this case, that the death, not having occurred from dis-  
 2165 ease of the lungs, nor by reason of his connection with the sale of liquors, and having no connection with his business, but having occurred from other causes, therefore that the defendant ought to pay. That is not the law, gentlemen. When men make contracts with an insurance company, they are bound by their contract, and if they have incorporated stipulations in these contracts which are false or which are not performed they cannot recover, even if the breach of those conditions had not the remotest connection with the loss; and so, gentlemen, in considering this case, you will not allow any such considerations as these to affect your  
 2166 judgment.

Gentlemen, I think I have stated all that is necessary, and I will hand you these questions, and you will answer "yes" or "no" to each of these seven questions that are numbered upon this list, as you shall find the very truth to be.

Following the last question is a general verdict for the plaintiffs; if you find the seven propositions in favor of the plaintiffs, you will then find a gen-



eral verdict for the plaintiffs and assess their damages at \$18,743.27.

If, on the other hand, you find any of those propositions in favor of the defendants, you will cancel this general verdict for the plaintiffs and bring in this general verdict for the defendants.

Gentlemen for the plaintiffs, have you any requests to charge? 2167

*Mr. Russell.*—I think it would be well for the Court to suggest to the jury that if they find either of those questions in favor of the defendants, their general verdict will be for the defendants.

*The Court.*—I mean to say that.

*Mr. Newton.*—We have no requests.

*Mr. Russell.*—One subject upon which your Honor did not charge the jury, I ask your Honor to charge; that the fact, if it be so, that all the physicians agreed at the autopsy, that the fibrous nodules were probably the result of old pulmonary phthisis, should be considered by the jury in determining the reliance to be placed on the medical testimony as to the cause of the nodules. 2168

*The Court.*—I say, gentlemen, that has nothing to do with this case. I decline to charge it and I will explain my reason.

This record of the autopsy is not in evidence in this case, as affirmative evidence, of the truth of the facts recited therein. It could not be. It would not be competent as I held during the trial. It is in evidence this far and no farther; six physicians who were present at that autopsy, six of the fifteen have been sworn and have sworn they signed that statement, and it was competent to put that in evidence for the purpose of showing that they had made contradictory statements—statements in conflict with what they testified here during the trial. It is received for no other purpose, and is to have no other weight here. The fact that fifteen doctors 2169

signed it, who are not here to testify as to what they saw, can give it no weight whatever and their signatures are entitled to no respect.

2170 To which ruling and refusal to charge as requested, the counsel for the defendants duly excepted.

The counsel for the defendants further requested the Court to charge that the answer to the question, "Has he been engaged in or connected with the manufacture or sale of liquor?" is a question that may be truthfully answered, "yes," if he had been connected with the sale of liquor.

*The Court.*—I decline to charge that differently from what I have already charged.

2171 To which ruling the counsel for the defendants duly excepted.

The counsel for the defendants also requested the Court to charge that, in connection with the financial condition of Mr. Dwight at the time these applications were made, the jury should take into account the fact that the witness Pine says that in order to raise his first premium he was compelled to borrow the money of Mr. McDonald.

*The Court.*—That is a proper fact for you to take into consideration.

2172 Gentlemen of the Jury: If you get into any dispute or doubt about the meaning of any of these questions, you have a right to come into Court and receive further instructions in respect to them. You will consider each question carefully by itself and answer it as you shall find the truth to be, without regard to how it may affect the general verdict. Answer each question truly and then render such

a general verdict as the evidence demands, under the instructions of the Court.

The counsel for the defendants also requested the Court to charge the jury that the statements in the petition and schedules in bankruptcy of Mr. Dwight, relating to his real estate operations, are not evidence upon the question of this breach of warranty as to what his occupation was for the last ten years. 2173

*The Court.*—Were they not read in evidence?

*Mr. Russell.*—They were read in evidence yesterday by Mr. Chapman.

*The Court.*—Were they not read in evidence before?

*Mr. Russell.*—They were read in evidence to show his bankruptcy, but the statements as to the extent of his real estate operations, and taxes and income from real estate, are not evidence, we submit, from which, as read by Mr. Chapman in Smith's speech last night, the jury can find that he had any real estate operations. 2174

*The Court.*—I have forgotten whether the plaintiffs read these statements in the bankruptcy petition and schedules, and cannot take time to look at the record. If the defendants, when they read these schedules of bankruptcy in evidence, limited their effect to simply proving the fact of bankruptcy, then, gentlemen, the counsel for the plaintiffs would have no right to draw any inferences or ask you to draw any inferences from the statements made therein in respect to the condition of his property. 2175

To which refusal to charge as requested, the counsel for the defendants duly excepted.

*The Court.*—I do not know how the fact was. I

ask the counsel to look over these various requests to charge, and see if I have covered them, or marked them correctly.

Counsel examined requests.

2176

*Mr. Larocque.*—We call attention to one request.

*The Court.*—They say, “In considering the question of fraud, the jury must also take into consideration the circumstances under which Dwight obtained possession of the policy in the Union Mutual Life Insurance Company of Maine, after knowledge of the instructions sent to Mr. Batchelder not to deliver the policy, including the dictation by Dwight of the telegrams sent by Batchelder to Winship, the agent, and DeWitt, the president.”

2177

You are to take into consideration the fact that he obtained this policy and refused to deliver it up. And you are also to take into account the obtaining of these various other policies and everything he did, and everything that he refused to do, in respect to them.

They also ask me to call your attention to the fact that you should take into consideration the evidence of the witnesses who made demands upon Dwight at Windsor, for a return of the policies issued to him by the several companies, and the tendering back of the premiums paid therefor, including the evidence of the witnesses Freeman and

2178

Phillips, and the refusal of Dwight to return the policies.

I have just said that in effect, gentlemen, and I repeat it.

*Mr. Newton.*—I request your Honor to charge that the declarations of sixteen years ago are to be considered with care.

*The Court.*—I do not know of any such declara-

ations, excepting those relating to the hemorrhage, if those are the words you refer to.

*Mr. Russell.*—The one to Seccomb was not sixteen years ago.

*The Court.*—No, sir; that was in 1876.

The rule of law in this respect is this: that the 2179  
declarations of parties are among the most dangerous species of evidence arising from the fact that the speaker may not be understood by the witness in the precise sense that he intended to be understood; also that the witness may not correctly remember or correctly repeat on the witness stand the precise declaration made by the speaker, or the words which he used to give.

Of course, the longer period of time that has elapsed between the time when the declarations were made, and the time when the witness speaks of them, the more liability there is for error.

But, gentlemen, the law goes further, and says 2180  
that when declarations are clearly proven and satisfactorily established, then those declarations become a very satisfactory species of evidence.

Now, in this case, gentlemen, the question is, whether these declarations that have been testified to by the witnesses were made under circumstances which would call for the declaration,—made under circumstances and to persons that would be likely to cause them to be recollected. You recollect what the witnesses said about the circumstances under which they heard these declarations. I cannot go over them now. Were they circumstances 2181  
that would be likely to impress them upon the mind; and were they honest men, and did they truthfully report what they heard?

Gentlemen, you will be furnished with your meals, and be cared for until such time as you shall have agreed upon your verdict. At noon, or whatever time the jury wish their dinner, the Sheriff will provide them with dinner, and when supper



time comes, if they have not agreed upon their verdict, they will be provided with supper, and I will provide what further shall be done hereafter.

I will hand the application to the jury to take with them.

2182 *Mr. Russell.*—And let them take the policy also.

*The Court.*—You will take both the policy and the application with you.

The jury retire.

*Mr. Russell.*—We except in the first place to that portion of the charge which says that the fraud must have been consummated by death in order to entitle the defendants to a verdict.

2183 Also to that portion of the charge in which your Honor says that the defendants are not entitled to a verdict on the sixth finding of fact, namely, the one of fraud, under the state of the pleadings, unless the fraud was consummated by suicide.

Also to that portion of your Honor's charge which states that the only consideration for the jury in regard to the belief of the witness in the existence of a God and of future punishments and rewards, is the test as to whether he believes in the binding obligations of the oath, under the laws and moral considerations.

2184 *Mr. Larocque.*—We except to so much of the charge as takes from the consideration of the jury, in regard to the credibility of the witness, his particular belief in that regard.

*Mr. Russell.*—We except to that portion of the charge which submits to the jury the question as to whether the answer to the question as to the manufacture and sale of liquor is a compound question.

*Mr. Larocque.*—We except separately to your

Honor's refusal to charge in accordance with each and every request submitted.

*The Court.*—Yes, sir.

*Mr. Larocque.*—And we except separately to each and every modification of the requests that have been charged in part.

2185

*The Court.*—That you are entitled to and it should be entered under the individual requests as they appear in the record.

*Mr. Larocque.*—We would also like to except to that part of your Honor's instruction on the subject of spitting blood, in which, after reciting certain diseases, you say that if the jury find the blood did not come from such disease, their verdict upon that question should be for the plaintiffs; I do not give the precise language.

*The Court.*—The idea, perhaps, is in it.

2186

*Mr. Larocque.*—Also on the same subject, to the instruction that if the spitting of blood was a result of a mere temporary ailment, from which he recovered, the plaintiff is entitled to recover, unless the spitting of blood resulted in a disease.

*The Court.*—Or proceeded, or sprang from a disease, or was caused by a disease.

*The Court.*—Have you got through presenting requests, gentlemen (addressing the counsel of both parties)? Both counsel answered, "Yes."

2:20 P. M.

*The Court.*—We will go out without adjournment, and if the jury agree the Sheriff may send for us, and if they do not report before 8 o'clock this evening, we will come in and give such further directions as are necessary.

2187

5:25 P. M. Jury return into Court.

*The Court.*—I understand you wish to communicate with the Court upon some subject; what is it?

*Juror.*—We wanted to tell you how we stood on the subject.

*The Court.*—Have you agreed on a verdict.

*Juror.*—We have not.

2188 *The Court.*—Then I do not want to know how you stand, unless there is some subject upon which you desire further instruction, or some subject upon which you desire to have the evidence read. Is there any subject upon which you wish further instructions?

*Juror.*—I do not know that there is.

*The Court.*—Is there any question in dispute among you as to what the evidence is upon any subject?

*Juror.*—I don't know that there is.

2189 *The Court.*—Well, then, gentlemen, you have not entered upon the threshold of this case. You have hardly entered into the vestibule of this case. This case has occupied twenty-three days in its trial, and you have not commenced to give it consideration. You must give it more consideration, much more consideration. It is a case in which the Court, if it was called upon for an opinion, would spend some time in consideration of the evidence given, and, gentlemen, it is your duty to patiently, carefully, honestly consider this evidence in the light of the arguments which have been addressed to you by the counsel and the instructions given to you by the Court, and strive to arrive at a  
2190 verdict.

It is not fitting or proper that any particular juror should say, in the very outset of the discussion, "I will never agree in a verdict except in favor of the plaintiff," or "except in favor of the defendants." That is not at all the theory of a trial by a jury. Of course it is hard, it is difficult for twelve men to arrive at a unanimous conclusion

or opinion upon any subject, but there is no other method devised by the law of this State for the determination of issues of fact of this character, except by the agreement of twelve minds, after an honest comparison of their views and a discussion of the evidence.

Now, gentlemen, there must not be any anger or feeling. One man, or two men, or three men, or no man, must say positively, I know I am right about this and I will never decide any other way. You must listen to the counsel of your fellows, be guided by your judgment, and you must strive longer, much longer, to arrive at a verdict in this case. Retire. 2191

8 P. M. The Court ordered the jury to be provided with beds and adjourned the Court till 9 o'clock A. M. on Wednesday, December 12th, 1883.

Wednesday Morning.—Jury return into Court. 2192

*The Clerk.*—Gentlemen, have you agreed upon a verdict?

*Juror.*—We have not.

*The Court.*—Have you anything to say to the Court, or do you want any further instructions upon any point?

*Juror.*—I do not know that there is anything more.

*The Court.*—Gentlemen, it is your duty to take up the various questions submitted to you in the order in which they stand on that paper, and to go along through them and agree upon so many of them as you can. 2193

*Juror.*—We have done so.

*The Court.*—Having done that then you may come back again and I will try and give you instructions upon the propositions or proposition that

you shall not be able to agree upon, and it will be your duty to make a further effort to agree. You have not considered this case yet twenty-four hours, a case that occupied twenty-three days in the trial, and it will be your duty to give it a much further consideration than you have given it.

2194

*Juror.*—Shall I state how many we have agreed upon?

*The Court.*—Not now. Do you disagree as to the evidence given in any particular?

*Juror.*—Well, no, sir, I think not.

*The Court.*—If there should be any disagreement about that, the evidence can be read to you. Do you disagree as to what the Court said to you on the propositions?

*Juror.*—No, sir.

2195

*The Court.*—You must remember this is a case of importance and involves a large expenditure to prepare it for trial, and it is highly important for you, if you can conscientiously, in the end agree upon a verdict in this case.

All verdicts are a result of a comparison of views, and to some extent the compromise of views. If a juror has a settled conviction and he cannot conscientiously yield it, that is one thing; but before he places himself in that position, and takes that stand, he should be very sure he is right, through a careful review of the evidence, and it is the duty of all of you not only to take counsel of your own judgment, but to listen to the arguments of your fellows; they may be able to present some views that are worthy of your consideration. Retire, gentlemen.

2196

The jury retired.

*Mr. Russell.*—I desire to except to the remark your honor made to the jury that a verdict is reached by a compromise of views.



*The Court.*—Yes, sir; I have said that and it has been excepted to many times.

*Mr. Russell.*—The only reason is, that the word “compromise” to a juror’s mind is a hurtful word.

Counsel for the defendants in due season filed 2197  
the following additional exceptions to the charge:

To that part of the charge, “and was consummated by the voluntary death of Walton Dwight,” to the limitation to the effect of the finding of fraud.

Also, “that there is evidence that some time in 1877 or 1878, Dwight engaged in operations in grain in Chicago.”

Also, “that the evidence shows that the account of the money expended for these various improvements was kept in his name, that the land was assessed to him, and that the rents amounted to a very considerable sum.” 2198

Also, “that the evidence further disclosed that during this period of time he owned a considerable quantity of land in Wisconsin.”

Also, “it is for you to say, taking the question as put, and the purpose for which it was put, if it was fairly and truly answered.”

Defendants except to the words, “and the purpose for which it was put.”

To so much of the charge as instructs the jury in substance that the failure of the plaintiffs to swear as a witness, Spaulding, the hotel keeper, cannot be the subject of unfavorable presumptions against them. 2199

Also to instructions that all verdicts are to some extent the result of a compromise of views.

Also to that part of the charge referring to experts, which says: “You have the right to regard it, and you should regard it with great suspicion.”

Also, to the portion of the charge that instructs the jury that, “if the witness recognizes the obli-

gation of the oath under the law, and recognizes its moral obligation, and believes that the oath or affirmation which he takes, binds his conscience to testify the truth, and that moral penalties will follow in case of failure, these are the only considerations to be taken into account as affecting his credibility in this connection.”

2200 Also to so much of the charge as instructs the jury that the defendants are not entitled to a verdict on the ground of fraud, unless they find “that the fraud was consummated by the willing death of Walton Dwight by self murder, by suicide.”

Also to the refusal to charge that the fact, if this be so, that all the physicians agreed at the autopsy that the fibrous nodules were probably the result of old pulmonary phthisis, should be considered by the jury in determining the reliance to be placed on the medical testimony as to the cause of the nodules.

2201

Wednesday evening, 8 o'clock P. M.

*The Court.*—Has the jury anything to report to the Court.

*Sheriff.*—No, sir ; but I understand that one of the jurors is unwell.

The jury return into Court.

Mr. Davis, one of the jurors, reported himself as being ill.

*The Court.*—Is there any objection to Dr. Brooks seeing this man ?

2202 *Mr. Gladding.*—None on our part

*Mr. Larocque.*—And none on our part.

*The Court.*—Gentlemen, since we met before, I received a communication from you which I will read :

“JUDGE FOLLETT :—

Dear Sir :—We have not agreed upon

our verdict nor is it probable that we ever shall as we are no nearer it now than we were last night at five o'clock."

You say it is not probable : that gives me hope, great hope that it is not impossible. And you say that you are no nearer it than you were last night at five o'clock ; that convinces me that there has been some defect in the discussion that you have given this case since you have been out, and I doubt not you can rectify it. Retire, gentlemen. 2203

Court adjourned to Thursday Morning at 10 o'clock A. M.

THURSDAY MORNING, 10 o'clock A. M.

The jury return into Court.

*The Clerk.*—Gentlemen of the jury, have you agreed upon a verdict? 2204

*Juror.*—We have not.

*The Court.*—Is there anything you wish to say to the Court in respect to this case?

*Juror.*—Mr. Newton claims he wants your charge for some purpose.

*The Court.*—Do you want the charge read.

*Juror Newton.*—I think it might hasten it if we had the charge to read from in our room.

*The Court.*—Is there any objection to it, gentlemen? 2205

*Counsellor Newton.*—Not any on our part.

*Mr. Larocque.*—The only part of the charge we have seen has had more or less of corrections about it. We have not had it in one piece. I think if the jury want more instruction, it would be more proper to come from the Court.

*The Court.*—I will have the counsel look over the

charge, and some time this afternoon, after they have had an opportunity of looking it over, I will call you in again, and then if they do not consent to your taking it and reading it over for yourself, I will either read it through to you from beginning to end, or read such portions of it as may aid you upon the particular point of your disagreement.

2206

Now, gentlemen, you must be very patient in this matter. Of course this involves very great labor—this long consideration of the case—but you must remember how much labor has been bestowed upon it by the counsel and Court; and if there is a disagreement, it will have to be all gone over again. It is no reason why there should be an improper agreement; but that is a reason why you should strive earnestly, long and faithfully to arrive at an agreement upon the issues submitted to you.

Is there anything that the Sheriff can do to make your position more comfortable?

2207

*Juror.*—I think not.

*The Court.*—The Sheriff said yesterday that you wanted some tobacco, and after seeing counsel on both sides, and they having no objection, you were provided; and I now say if you want to smoke, or wish tobacco, the Sheriff will provide you with those things. Retire, gentlemen.

2208

Before counsel concluded summing up, they handed the Court their requests to charge, and before charging the jury the Court marked the requests and returned them to counsel, and requested counsel to examine them, and if the Court failed to charge as indicated by the marks that his attention be called to the failure at the close of the charge.

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The following are the defendants' requests, and were returned marked as indicated :

## REQUESTS TO CHARGE BY DEFENDANTS.

*First.*—The policy in suit, with the application therefor, together constitute the contract of insurance between Walton Dwight and the defendant.

The Court so charged.

2209

*Second.*—By the contract of insurance between Walton Dwight and the defendant, the validity of the policy is made to depend upon the truth of the statements and representations contained in the application.

The Court so charged.

*Third.*—By the contract of insurance involved in this action the materiality of each and every answer made by Dwight to the questions contained in the application was agreed to by the parties, and the sole question as to each of said answers is as to whether or not the answer is true.

2210

The Court so charged.

*Fourth.*—If the principal business of Dwight for ten years last preceding August 22d, 1878, was not that of real estate and grain dealer, plaintiffs cannot recover.

The Court refused so to charge.

*Fifth.*—If Walton Dwight, while he kept a hotel in Binghamton, was connected with the sale of liquor, the plaintiff cannot recover.

The Court refused so to charge.

2211

*Sixth.*—If Dwight had spitting of blood from the lungs or other respiratory organs, prior to August 22d, 1878, plaintiffs cannot recover.

The Court refused except as charged.

*Seventh.*—If the jury find that Walton Dwight, prior to August 22d, 1878, had spitting of blood



resulting from hemorrhage of the lungs or other respiratory organs, the plaintiffs cannot recover, and the general verdict must be for the defendant.

The Court refused except as charged.

2212

*Eighth.*—In considering the question as to the source of the spitting of blood by Walton Dwight, the jury should consider the testimony of the witnesses to the fact of such spitting of blood, the declarations of Dwight in evidence that he had had hemorrhages of the lungs, the pleural adhesions disclosed by the post-mortem examination, and existence of the fibrous nodules found in the apex of the right lung on such post-mortem examination, and the medical testimony as to the origin of such pleural adhesions and fibrous nodules.

2213

The Court declined except as already charged.

*Ninth.*—If the jury find that Walton Dwight declared to the witnesses Forsman, Bartles and Seccomb, or either of them, that he had had hemorrhages of the lungs, this evidence establishes a breach of warranty as to the spitting of blood and the defendant is entitled to a general verdict.

The Court refused.

2214

*Tenth.*—If the spitting of blood by Walton Dwight, in evidence in this action, proceeded from any unascertained source, it was his duty to have stated the fact in answer to the question in the application as to the spitting of blood, and there was a breach of warranty in respect to such spitting of blood, and the general verdict must be for the defendant.

The Court refused so to charge as not in sue by pleadings.

*Eleventh.*—If the jury find upon the evidence that the policy in suit was obtained by Walton Dwight with intent to defraud the defendant, then the general verdict must be for the defendant.

The Court refused to charge on this question, except as already charged.

*Twelfth.*—In considering the question of fraud, 2215  
the jury must take into consideration the large amount of insurance applied for by Walton Dwight from the 31st day of July to the 10th day of September, 1878, and the circumstances under which the applications therefor were made, including Dwight's financial condition at that time.

The Court so charged.

*Thirteenth.*—In considering the question of fraud  
the jury must also take into consideration the circumstances under which Dwight obtained possession of the policy in the Union Mutual Life Insurance Company of Maine, after knowledge of the instructions sent to Mr. Batchelder not to deliver the policy, including the dictation by Dwight of the telegrams sent by Batchelder to Winship, the agent, and DeWitt, the president. 2216

The Court so charged.

*Fourteenth.*—In considering the question of fraud, the jury should also take into consideration the testimony of the witnesses who made demands on Dwight at Windsor for the return of the policies issued to him by the several companies, tendering back the premiums paid therefor, including 2217  
the testimony of the witnesses, Phillips and Freeman, and the refusal of Dwight to return the policies.

The Court so charged.

*Fifteenth.*—If Walton Dwight obtained the policy in suit, intending to put an end to his own

life, whether he did commit suicide or not, the plaintiffs cannot recover.

The Court refused except as charged.

2218 *Sixteenth.*—If, at the time of making the application for the policy in suit, Dwight was not insured in the Connecticut Mutual Life Insurance Company, the plaintiffs cannot recover.

The Court refused so to charge.

*Seventeenth.*—If, at the time of making application for the policy in suit, Dwight was not insured in the Mutual Life Insurance Company of New-York, the plaintiffs cannot recover.

The Court refused so to charge.

2219 *Eighteenth.*—If, at the time of the application for the policy in suit, Dwight had made application to the Phenix Mutual Life Insurance Company, which had not led to an insurance, plaintiffs cannot recover.

The Court refused so to charge.

*Nineteenth.*—If, at the time of the application for the policy in suit, Dwight had made application to the Connecticut Mutual Life Insurance Company, which had not led to insurance, the plaintiffs cannot recover.

The Court refused so to charge.

2220 *Twentieth.*—If, at the time of the application for the policy in suit, Dwight had made application to the Mutual Life Insurance Company of New-York, which had not led to an insurance, plaintiffs cannot recover.

The Court refused so to charge.

*Twenty-first.*—That if from the evidence given by the defendants the presumption was sufficiently established that Dwight did not die from natural

disease, it became incumbent upon the plaintiffs to show that death did not result from suicide.

The Court refused so to charge.

*Twenty-second.*—Suicide is death resulting from the act of deceased designed for that purpose.

The Court so charged.

2221

*Twenty-third.*—That in weighing the testimony of a witness the jury are entitled to take into consideration on the question of his credibility, his own declarations as to his belief or unbelief in the existence of God, and a future state of rewards and punishments.

The Court refused to charge on that subject otherwise than he had already charged.

*Twenty-fourth.*—The statements in the schedules in bankruptcy, are not evidence of his occupation.

The Court refused to charge on this subject otherwise than as already charged.

2222

The counsel for the defendants in due season excepted separately to the refusal of the Court to charge in accordance with each of the several requests submitted, and separately to each and every modification by the Court of the proposition embraced in each and every of said requests ; and separately to each and every portion of the charge actually delivered, so far as the same is in conflict with any or either of said requests.

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THURSDAY, December 13, 3 P. M.

The jury came into Court, and, upon being duly called, said they had agreed on their verdict, and rendered the same as follows :

To question 1 : Was the occupation of Walton

Dwight, for the ten years preceding August 22, 1878, real estate and grain dealer, within the intent and meaning of the contract?

They answered, yes.

2224 To question 2: Was Walton Dwight engaged in the sale of any beer, wine, or other intoxicating liquors at any time within five years prior to August 22, 1878, within the intent and meaning of the contract?

They answered, no.

To question 3: Was Walton Dwight connected with the sale of any beer, wine, or other intoxicating liquors, at any time within five years prior to August 22, 1878, within the intent and meaning of the contract?

They answered, no.

2225 To question 4: Had Walton Dwight, at any time, prior to August 22, 1878, had spitting of blood, resulting from disease of the lungs or other respiratory organs?

They answered, no.

To question 5: Was the ailment of Walton Dwight at Williamsport, in March, 1867, a mere temporary ailment, from which he recovered?

They answered, Yes.

To question 6: Was the policy of insurance on the life of Walton Dwight in suit in this action, obtained by him with the preconceived design and intent to defraud the defendant?

They answered, No.

2226 To question 7: Did Walton Dwight die by suicide?

They answered, No.

And also rendered a general verdict for the plaintiffs, and assessed their damages at \$18,743.27.

At request of Mr. Larocque, the jury was polled, on each of the questions, and also on the general verdict, and the same answers were given, and the same verdict rendered.



Counsel for the defendants thereupon moved upon the minutes of the Justice to set aside the verdict of the jury, and for a new trial on the exceptions taken by the defendants, and on the ground that the verdict is contrary to evidence and contrary to law. 2227

The Court denied the motion by an order which is included in the judgment roll, and appears at page 43.

From the judgment entered on the verdict aforesaid and from the said order denying the motion for a new trial the defendants have appealed.

The foregoing case contains all the evidence taken at the trial.

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2228

None of the evidence which was given, or the rulings or decisions which were made, or the exceptions which were taken on the trial of this action, appearing upon the record of the trial,—the Justice who tried this action has, upon the prayer of the defendants, settled and allowed the foregoing case containing exceptions, and orders that it be filed in the office of the Clerk of the County of Chenango, New-York, who will annex the same to the judgment roll.

Done at Norwich, N. Y., this 4th day of April 1884. 2229

DAVID L. FOLLETT,  
*Justice of the Supreme Court.*



# Supreme Court,

CHENANGO COUNTY.

2233

ANNA N. DWIGHT, ORLOW W.  
CHAPMAN and GEORGE F. LYON,  
Executrix and Executors, &c., of  
WALTON DWIGHT, deceased,

*against*

THE GERMANIA LIFE INSURANCE  
COMPANY.

2234

## EXHIBITS.

### Exhibit A.

Policy Germania Life Insurance Company contained in Judgment Roll. See page 6. [Read at page 49.]

### Exhibit B.

2235

THE GERMANIA LIFE INSURANCE COMPANY OF  
NEW YORK.

*Proofs of Death.* [Read at page 50.]

NO. 1. ATTENDING PHYSICIAN'S STATEMENT.

Name of the deceased? *Walton Dwight.*

Residence? *Windsor, Broome County, N. Y.*

Occupation? *Real estate & grain dealer.*

Were you the attending physician of the deceased? *Yes, in connection with Dr. D. S. Burr.*

2236 Was the deceased afflicted with any chronic or other disease, and, if so, how long? *No chronic disease. Had malarial fever, accompanied with occasional severe congestive chills—which continued about six weeks.*

If death ensued from disease, state its proximate and remote cause; if in any other manner, give the medical and other facts connected with the case? *The above was the proximate cause of death, & the exposure to malarial influences was the remote cause in my opinion.*

State the duration of the sickness? *About six weeks.*

State the date of death? *November 15, 1878.*

Dated this 16th day of January, 1879.

2237

*Geo. Burr, M. D.*

OATH.

STATE OF NEW YORK, }  
County of Broome, } ss. :

On this 16th day of January, 1879, before me came the above named George Burr, known to me as a physician in regular standing, and made oath that the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

*Geo. Burr, M. D.*

2238 Sworn and subscribed }  
before me, the day and }  
year first above written. }

*D. H. Carver,*  
*Notary Public.*

#### NO. 2. FRIEND'S STATEMENT.

Name of deceased? *Walton Dwight.*

Residence? *Windsor, Broome County, N. Y.*

Occupation? *Real estate & grain dealer.*

Was the deceased personally known to you?  
*He was.*

Were you present at the time of death? *Yes.*

Did you see the remains? *I did.*

Of what disease, or from what cause, did the deceased die? *Gastric fever of malarial origin, as I am informed.*

What was the age of deceased at the time of death? *Forty years, 10 mos., 25 days.*

Are you sure deceased is the same person whose life was insured by the Germania Life Insurance Company of New York? *I am.*

Dated this 16th day of January, 1879.

*Chas. A. Hull.*

#### OATH.

STATE OF NEW YORK, }  
County of Broome, } ss. :

2240

On this 16th day of January, 1879, personally appeared before me the above named Charles A. Hull, to me known, and made oath that the foregoing statements, by him made, are true and full, to the best of his knowledge, recollection and belief.

*Chas. A. Hull.*

Sworn and subscribed before }  
me, the day and year first }  
above written.

*D. H. Carver,*

*Notary Public.*

2241

#### No. 3. UNDERTAKER'S STATEMENT.

Name of the deceased? *Walton Dwight.*

Residence? *Windsor, Broome County, N. Y.*

Occupation? *Real estate and grain dealer.*

Date of birth? *December 20th, 1837.*

Age at death? *Forty years, 10 mos. 25 days.*



Of what disease, or from what cause, did the deceased die? *Fever.*

Place and date of death? *Spaulding House, Binghamton, N. Y., November 15, 1878.*

Did you know deceased personally? *I did.*

2242 Did you see and inter the remains of the above named? *I did.*

Dated this 24th day of December, 1878.

*Elias Ayers.*

(*Oath.*)

STATE OF NEW YORK, } ss. :  
County of Broome.

On this 24th day of December, 1878, personally appeared before me the above named Elias Ayers, to me known, and made oath that the foregoing statements, by him made, are true and full, to the best of his knowledge, recollection and belief.

2243 Sworn and subscribed before me }  
the day and year first above }  
written.

*S. W. Crandall,*  
*Com'r of Deeds.*

(*No. 4.*)

#### CLAIMANT'S STATEMENT.

2244 Notice is hereby given to The Germania Life Insurance Company that *Walton Dwight* has died; that deceased was the same person whose life was assured by said Company under Policy No. 69096, dated *August 28th, 1878*, for the sum of *fifteen thousand* dollars; that all premiums due prior to *his* death had been duly paid upon said Policy; that said deceased did not violate any of the conditions of said Policy, either in respect to residence, occupation or otherwise; that the undersigned *are* the legal owners of said Policy; and *have* a good and valid interest to the amount assured in the

life of said deceased, and, in proof of claim under said Policy, doth answer as follows:

1. Name of deceased? *Walton Dwight.*
2. Residence? *Windsor, Broome County, N. Y.*
3. Occupation at date of Assurance? *Real estate & grain dealer.*
4. Occupation since Assurance was effected? *Real estate & grain dealer.* 2245
5. Place and date of birth? *Windsor, N. Y., December 20th, 1837.*
6. Place and date of death? *Spaulding House, Binghamton, N. Y., Nov. 15th, 1878.*
7. How long had you known deceased? *Chapman, about fourteen years; Lyon, about six years; Mrs. Dwight, about twenty-four years.*
8. If insured in any other companies, give names of companies and amounts in each? *He had other insurances. A list is hereto annexed marked "Exhibit A."*
9. By what right do you claim the ownership of the Policy? *As Executors.* 2246

Dated at *Binghamton, N. Y.*, this 31st day of *December, 1878.*

*O. W. Chapman,  
George F. Lyon,  
Anna N. Dwight.*

STATE OF NEW YORK, }  
County of Broome. } ss. :

On this 31st day of *December, 1878*, personally appeared before me the above named *O. W. Chapman, George F. Lyon and Anna N. Dwight*, each to me known, and each made oath that the foregoing statements, by *him and her* made, are true and full, to the best of *his and her* knowledge, recollection and belief. 2247

*S. W. Crandall,  
Com'r of Deeds,  
City of Binghamton.*

(No. 6.)

BINGHAMTON, N. Y., January 16th, 1879.

To the Germania Life Insurance Company.  
New-York.

2248 Gentlemen.—I hereby transmit to you the proofs of the death of *Walton Dwight*, insured under Policy No. 69096, dated *August 28th*, 1878, for the amount of \$15,000, who died *November 15th*, 1878.

I affirm that the Policy was in force, and that no premium was due and unpaid on the day of his death; that the last premium due was paid on *or about* the *4th* day of *September*, 1878, and that after a careful examination of the circumstances of the case, I believe that the facts stated in the above named Certificates are true.

Yours Respectfully,

*H. C. Hermans, Agent.*

2249

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Exhibit A, forming part of proofs of loss.

Aetna Life, Hartford.....	\$10,000
New-York Life.....	10,000
Union Mutual, Maine.....	10,000
Mutual Benefit, New Jersey.....	10,000
Travelers' Ins. Co., Hartford.....	10,000
National Life, Vermont.....	10,000
North Western Mutual Life, Wis.....	15,000
2250 Washington Life, N. Y.....	10,000
Berkshire Life, Pittsfield, Mass.....	10,000
U. S. Life Ins. Co.....	10,000
Manhattan Life Ins. Co.....	20,000
Massachusetts Mutual Life, Springfield...	10,000
National Life, U. S. A..	5,000
Germania Life Ins. Co., N. Y.....	15,000
Home Life Ins. Co., N. Y.....	5,000
Metropolitan Life Ins. Co., N. Y.....	10,000

Brooklyn Life Ins. Co., N. Y.....	5,000
State Mutual L. A. Co., Worcester, Mass..	10,000
New England Mutual Life Ins. Co., Boston	10,000
Homeopathic Mutual Life Ins. Co., N. Y..	5,000
Equitable Life A. Society.....	50,000

## PAID UP POLICIES.

2251

John Hancock Mutual Life, N. Y.....	629
Globe Mutual Life Ins. Co., N. Y.....	1,187
Washington Life Ins. Co., N. Y. ....	1,340
Craftsmen's L. A. Co., N. Y.....	500
Universal Life Ins. Co., N. Y.....	234

The above, with an Accident Policy of \$10,000 in the Travelers' Ins. Co. of Hartford, Conn., constitute all the Policies of Insurance of which we have any knowledge or information.

[Proofs of loss comprised also copies letters 2252  
testamentary, issued in counties of Broome and  
Tioga, introduced in evidence as Exhibits F and  
G, *post.*]

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**Exhibit C.**

[Read at page 50.]

THE GERMANIA LIFE INSURANCE COMPANY,  
287 Broadway, NEW YORK, Novbr. 26th, 1878.

MESSRS. CHAPMAN & LYON,  
Binghamton, N. Y.

2253

*Dear Sir.*—Enclosed please find blank Proofs of Death for the case of Walton Dwight of Binghamton who was insured by policy No. 69096 and is reported to have died.

The above policy was issued in favor of Exec'rs administr's or assigns and we have received no

notice of its assignment and calling your attention to the Memoranda on the next page.

We are,

Respectfully yours,

C. DOREMUS,

*Secretary.*

2254

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**Exhibit D.**

[Read at page 50.]

GERMANIA LIFE INSURANCE COMPANY.

HUGO WESENDONCK, *Prest.*

FRED. SCHWENDLER, *Vice-Prest.*

CORNELIUS DOREMUS, *Sec.*

NEW YORK, Mch. 28th, 1879.

Messrs. CHAPMAN & LYON,

Binghamton, N. Y.

2255

*Gentlemen.*—We reply to your favor of 22d that we refuse payment of policy No. 69096 on the life of Walton Dwight.

Respectfully yours,

C. DOREMUS,

*Sec'y.*

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**Exhibit E.**

[Read at page 55.]

2256 CERTIFIED COPY CERTIFICATE OF DISQUALIFICATION OF SURROGATE OF BROOME COUNTY.

STATE OF NEW YORK, )  
*Tioga County,* ) ss.:  
 Surrogate's Office. )

I, CHARLES A. CLARK, Surrogate of the County of Tioga, do hereby certify, that I have compared the annexed copy of certificate of the Surrogate of



Broome County, N. Y., with the original record thereof in this office, and that the same is a correct transcript therefrom, and of the whole of said original record.

In testimony whereof, I have hereto set my hand and caused the official seal of the county to be hereto af- 2257  
fixed at Owego in said county, this  
18th day of June, in the year 1883.

[SEAL.]

CHARLES A. CLARK,  
*Surrogate.*

In the Matter of Proving the Last  
Will and Testament

*of*

WALTON DWIGHT, deceased, and  
the proceedings therein and  
thereunder.

2258

*To Hon. Charles A. Clark, Surrogate of the County  
of Tioga :*

I, WILLIAM B. EDWARDS, Surrogate of the County of Broome, hereby certify that I am the Surrogate and County Judge of Broome County, New-York, and that I am a trustee under the last will and testament of Walton Dwight, late of the town of Windsor, Broome County, N. Y., de- 2259  
ceased, and for that reason I am disqualified from acting as Surrogate in the matter of proving the last will and testament of said Walton Dwight, and the proceedings therein in the Surrogate's Court thereof and thereunder, and I hereby name you, Hon. Charles A. Clark, Surrogate and County Judge of Tioga County, N. Y., a county adjoining the County of Broome, as Surrogate to act in said

matter and proceeding. And I also certify that Theodore F. McDonald, the District Attorney of the said county of Broome, is named as legatee in said will, and is disqualified from acting as Surrogate in relation thereto in the Surrogate's Court thereof.

2260 And I further certify, that in the county of Broome there is no officer qualified to act as Surrogate in the matter of proving the last will and testament of the proceedings therein or thereunder in the Surrogate's Court thereof.

Dated Binghamton, December 6th, 1878.

W. B. EDWARDS,  
County Judge and Surrogate of  
Broome County, N. Y.

2261

· Exhibit F.

LETTERS TESTAMENTARY—TIOGA COUNTY.

[Read at page 55.]

In the Matter of the administra-  
tion of the goods, chattels and  
credits

of

WALTON DWIGHT, deceased.

2262

*The People of the State of New-York, to Orlow W. Chapman, George F. Lyon and Anna N. Dwight :*

*Whereas*, at the town of Owego in the County of Tioga, on the 30th day of December, in the year of our Lord one thousand eight hundred and seventy-eight, before Charles A. Clark, Surrogate,

acting in the matter of proving the last will and testament of Walton Dwight, deceased, in the County of Tioga, the said last will and testament was proved and allowed by us. And the said deceased having, while living and at the time of his death, goods, chattels and credits, within this State, by means whereof and the proving and 2263 registering the said will, the granting administration of all and singular the said goods, chattels, interests and credits, and also the auditing, allowing, and finally discharging the account thereof, doth belong to us ; and you the said Orlow W. Chapman, George F. Lyon and Anna N. Dwight, being named in said will as Executors thereof, the administration of all and singular the goods, chattels and credits of the said deceased, and the execution of the powers reposed in you by said will, is hereby granted to you the said Orlow W. Chapman, George F. Lyon and Anna N. 2264 Dwight, you having first taken and subscribed an oath before the said Surrogate, faithfully and honestly to discharge the duties of such executors.

In testimony whereof, we have caused the seal of [L. S.] office of our Surrogate to be hereunto affixed.

Witness, CHARLES A. CLARK, Surrogate of said county, at Owego, N. Y., this 30th day of December, 1878.

CHARLES A. CLARK,  
*Surrogate,*

Acting in the matter of proving the 2265  
last will and testament of Walton  
Dwight, deceased, in the county of  
Tioga.

STATE OF NEW YORK, }  
County of Tioga, } ss.:  
Surrogate's Office. }

I do hereby certify that I have compared the

foregoing copy of Letters Testamentary with the original record thereof in this office, and that the same is a correct transcript therefrom and of the whole of said original record.

2266

[L. S.]

In witness whereof, I have hereunto set my hand, and caused the official seal of the Surrogate's Court of Tioga county to be hereto affixed at Owego in said county, this ninth day of January, A. D. 1879.

CHARLES A. CLARK,  
*Surrogate.*

2267

**Exhibit G.**

LETTERS TESTAMENTARY—BROOME CO.

[Read at page 55.]

In the Matter of the administra-  
tion of the goods, chattels and  
credits

*of*

WALTON DWIGHT, deceased.

2268

*The People of the State of New-York, to all to  
whom these presents shall come, SEND GREETING :*

Know ye, that on the 30th day of December, 1878, before the Surrogate's Court, Charles A. Clark, Surrogate, acting in the matter of proving the last will and testament of Walton Dwight, deceased, in and for the County of Broome, the last

will and testament of Walton Dwight, late of the Town of Windsor, in said County, deceased, was duly proved and allowed, and with the proofs thereof recorded in the Surrogate's records of said county, as and for the last will and testament of the real and personal estate of the said deceased, and the said deceased leaving goods, chattels and credits within this State, by means whereof the granting administration of the same, and also the auditing, allowing and finally discharging the account thereof, doth belong unto us, and we being desirous that said goods, chattels and credits may be well and faithfully administered, do grant administration thereof, and the execution of said will, unto Orlow W. Chapman, George F. Lyon and Anna N. Dwight, the executors and executrix in the said will named, they having taken and subscribed the oath required by law. 2269

The said executors and executrix are required to make and return an inventory of the said personal estate, in due form of law, and to render a just and true account of their proceedings according to law. 2270

In testimony whereof, we have caused the Surrogate's seal of said county to be hereunto affixed the 30th day of December, 1878.

Witness, CHARLES A. CLARK, Surrogate, acting in the matter of proving the last will and testament of Walton Dwight, deceased, in the County of Broome.

2271

STATE OF NEW YORK, }  
*County of Broome,* } ss.:  
 Surrogate's Office. }

I, BENJAMIN F. SMITH, Clerk to the Surrogate's Court of said county, do hereby certify that I have compared the foregoing copy of Letters Testamentary with the original record thereof now remaining in this office, and have found the same to be a correct



transcript therefrom, and of the whole of such original record.

In witness whereof, I have hereunto set my hand [L. s.] and affixed the seal of the Surrogate's Court of said county this 9th day of January, 1879.

2272

B. F. SMITH,  
*Clerk to the Surrogate's  
Court of Broome County.*

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**Exhibit H.**

[Read at page 89.]

“TROY, N. Y., Aug. 21, 1878, 9:10 A. M.

To L. HARDING.

Application accepted for fifteen thousand. Policy  
2273 sent you to-day.

PECK & HILLMAN.”

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**Exhibit I.**

[Read at page 89.]

TROY, N. Y., Aug. 21, 1878.

L. HARDING,  
Binghamton, N. Y.

2274 *Dear Sir.*—We enclose new policy 151,227, Wal-  
ton Dwight, Aug. 16. Premium, \$486.30; semi,  
\$252.58.

Yours truly,

PECK & HILLMAN.

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**Exhibit J.**

[Entries contained in Policy Register of Lowell Harding, agent at Binghamton, of the Connecticut

Mutual Life Insurance Company, of Hartford, Conn. Read at page 96.]

*“Number of Policy, 151,227; Date of application, August 15, 1878; Person in whose favor the policy is made, Frank Dwight, son of Walton Dwight; Name of person whose life is insured, Walton Dwight, Windsor, N. Y.; age, 41; Term of insurance, semi-annual; Amount of premium \$252.88. Returned policy and renewal by order of Company, September 24th. A fraud believed to have been perpetrated on the agent by the Home office in recalling this policy; time will tell.”* 2275

[NOTE.—The last paragraph in italics was excluded by the Court.]

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**Exhibit K.**

REPORT OF NAT B. FREEMAN.

2276

[Read at page 180.]

T. H. BROSNAN,

*Superintendent United States Life Ins.  
Co. in the city of New-York.*

In accordance with your instructions, I proceeded to Binghamton, N. Y., and there learned that Mr. Walton Dwight was no longer considered a citizen of that place, and that he was at present hunting near Windsor, N. Y., a small place about 15 miles from Binghamton. I therefore went to Windsor, and after long delay met Mr. Walton Dwight. After stating my business, I asked him if he had received a letter from Mr. James Buell, President, dated Sept. 21st. He seemed either to forget its receipt or did not wish to acknowledge the same. I then handed him a copy, which he read. I then handed him Mr. Buell's letter, introducing myself and making formal tender of the 2277

return of the first quarterly premium on policy 42,120, and asking the return of said policy to the company. Mr. Dwight stated that he could not for a moment entertain any such proposition; that he had carefully considered the subject of insurance before making application therefor; that he

2278 not only carefully answered all the questions in the application, but had also considered the character and standing of the company, and in every respect had acted in good faith, with a full understanding of what he was doing. He stated that he could not and would not entertain any proposition for the surrender of any policy of insurance on his life, for if he did so, it would compromise his manhood, and be an acknowledgment on his part of error or misstatement, which would affect his entire line of insurance.

He admitted that some years ago, while in

2279 Canada, he contracted "a severe cold with a terrible cough"; that the cold was so bad that it caused bleeding at the nose, and he believed that this blood, or a part of it, flowed into his throat, and was coughed or hawked up, but that no hemorrhage of the lungs ever occurred.

I then and there, Saturday, October 5th, 1878, tendered him the amount of quarterly premium paid by him, viz.: eighty-six dollars in United States Treasury notes (legal tender) as follows:

	One (1)	dollar Treasury note series of 1875, K915197E	LETTER A.
	One FIVE (5)	" " " " B " B141309E	" "
	One TEN (10)	" " " " " 1869, H6659283*	" C.
	One TWENTY (20)	" " " " " A3328341*	" A.
2280	One FIFTY (50)	" " " " " Y485599*	" C.

This tender, he (Dwight) positively and absolutely refused to accept under any circumstances whatever, stating that he now held \$256,000 of life insurance, and expected to secure more during the coming week, and again repeated that he would not surrender a single policy or release any one of the companies now carrying a risk on his life. He

stated that he had a direct object in view in securing this insurance, but did not explain what his object was, and he expected, if he died at once, every company would pay the full amount of their respective policies. I then again called his attention to the fact of misstatement of facts in his application to the United States Life Ins. Co., that the company had immediately notified him of his error, and now tendered him a return of the full amount of money paid by him, and therefore his policy was null and void on account of such misstatement, and I asked him what object he could have in holding it. He said the company had shown itself honorable in the whole matter; that they had treated him in a gentlemanly, courteous manner, and for that reason he felt assured their business was conducted on correct principles. He therefore, on this very account, felt more disposed than ever to retain the policy, and positively would not give it up. 2281 2282

NAT B. FREEMAN.

New-York, Oct. 7, 1878.

CITY OF NEW-YORK, { ss. :  
*County of New-York,* }

On this seventh day of October, 1878, before me personally came, NAT B. FREEMAN, to me personally known, and known by me to be the individual who executed the above statement, and being by me duly sworn, acknowledged that the same was true in all its particulars. 2283.

[SEAL.]

THEODORE D. RICH,  
*Notary Public,*  
 N. Y. Co.

## Exhibit L.

SCHEDULE ANNEXED TO LETTER OF WALTON  
DWIGHT TO ABEL BENNETT, DEC. 15, 1876.

[Read at page 137.]

2284	A. Schedule of property in Dwight place and elsewhere, in the hands of Walton Dwight, with estimates of present cash value, December first, 1876 :	
	Nos. 1, 2, 3, 4, 5, 6 and 7, river front, between Ferry, Front st. and Erie Railroad, and front houses rent for \$300 to \$625 ; average about one-half rented ; would rent for about four hundred, and probably all be taken ; ought to be worth five thousand each, or for the plot and seven houses .....	\$35,000
2285	Nos. 113, 115 and 117, west side of Front street and South Erie Railway, rent for six hundred each; all rented at this. A concession of at least one hundred each will have to be made on rents for the coming year. They ought to be worth six thousand each.....	18,000
	Nos. 1, 2, 3, 4, 5, 6, 7, 8, Dwight House, with plot of ground on which located would probably rent for about six hundred per house, or forty-eight hundred for the block. It ought to be worth....	56,000
2286	121 Front street, cor. Dickinson, partly furnished, rents for seven hundred per year; would probably rent, without furniture, for six hundred; ought to be worth .....	6,000
	No. 123 and 125 Front st., adjoining winding way; rent for five hundred a year; both rented, but concessions will have to be made on next year's rent; ought to be worth five thousand each....	10,000
	Nos. 127, 128, 129, 130, 131, 132, 133, 134,	



135, 136, 137, east and west side front, north of winding way, and Nos. 1 and 2, winding way, rent this year for from \$180 to \$200 each; average about four-fifths rented; will not bring at outside over \$150 each for coming season; worth or ought to sell for \$1,500 each (13), in all..	19,500	2287
Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19, winding way; rent from \$96 to \$150 each; average three-fourths rented; will probably rent for \$100 each coming season; ought to be worth \$1,000 each .....	9,000	
Nos. 1 and 3 Dickinson st., rent this year for \$950; concessions of at least \$150 will have to be made on rents for next year; worth \$4,000 each .....	8,000	
Nos. 5, 7 and 9 Dickinson st., rent for six hundred dollars this year; probably no concession will have to be made for the coming season; ought to be worth \$2,000 each .. . . . . .	6,000	2288
Stables north of the last-mentioned house ought to be worth two thousand dollars.	2,000	
Dwight park, about 500 feet on Front street north Erie Railway, ought to sell for \$30 per foot .....	15,000	
Two vacant lots cor. Ferry and Front streets, ought to sell for about \$1,500 ....	3,000	
3831 shares Williamsport and Canada Lumber Co.'s stock ought to be worth a large amount, but would not sell at present at any price; these shares are put up to secure Messrs. Cummings, Allen and Comly, and Chapman and Martin for fees and interest, amounting to about \$20,000; I will not carry this out, but will assign all my right and interest in the same to the bank.		2289
283 shares Independent Sewing Machine stock; at present this stock has no mar-		

ket value, but will treat it the same in the way of assignment. The interest in the Binghamton *Times*, with all liens on same, will surrender to the bank, the same as I propose on the stock herein mentioned.

2290	About 10,000 acres timber land in Oconto Co., Wisconsin, an assignment of the Dodge mortgage; ought to be very valuable, but the best cash offer that could be obtained for them at present would not probably exceed three dollars per acre; will carry them out in lump at.....	\$35,000
	Present value estimated at what the personal property would probably sell for at auction, or by peddling out, including Dwight House furniture and livery. ...	\$17,500
2291	Total assets carried out.....	\$240,000

Indebtedness by first and chattel mortgages, covering all items carried out in the foregoing schedule :

	Atlantic Mutual Life Insurance Company of Albany, \$50,000, and interest to December first of \$1,750.....	\$51,750
	Mutual Life Insurance Company of New-York, \$40,000, and interest to December first, 1877.....	\$40,700
2292	Continental Life of New-York, \$30,000, and int. to Dec. first, 1876 .....	\$31,050
	Equitable Life Insurance Company, New-York, and interest to Dec. first.....	\$31,050
	Harper Dusenbury for collateral for his own notes, and indorsements and interest	\$78,500
	Taxes due on Binghamton and Wisconsin real estate and insurance about .....	\$2,000
	Mortgage to Messrs. Hall and Smith, two	

lots, south corner of South Ferry and  
Front streets..... \$5,000

Total amount of secured indebtedness.....\$240,050

### C Summary.

The outside amounts of the property in the city  
of Binghamton, and mentioned in schedules " A " 2293  
and " B " would rent for the coming year, if oc-  
cupied, sums up as follows :

Seven house river front, Nos. 1, 2, 3, 4,	
5, 6, 7.....	\$2,800
Nos. 115, 113, 117, west side Front street..	\$1,500
Dwight House, Nos. 1, 2, 3, 4, 5, 6, 7, 8....	\$4,800
No. 121 Front St. Cor. Dickinson.....	\$600
123 and 125 Front street adjoining wind-	
ing way.....	\$900
Nos. 127, 128, 129, 130, 131, 132, 133, 134,	
135, 136, 137, east and west side Front	2294
street, and Nos. 1 and 2 winding way	
\$150 each.....	1,950
Nos. 3, 5, 7, 9, 11, 13, 15, 1. 9 winding way	
\$100 each .....	900
Nos. 1 and 3 Dickinson street.....	800
Nos. 5, 7 and 9 Dickinson street.....	600
Stable.....	150
	<hr/>
	\$15,000

The only other property that earns anything,  
mentioned in the schedules " A " and " B " is the 2295  
Binghamton " Daily Times," this thus far has not  
been seen self sustaining. For sometime the rentals  
will be the entire income. This will rather fall be-  
low, than overrun the \$15,000 per annum.

The interest on the secured indebtedness  
at seven per cent. would be..... \$16,650  
The annual taxes on the assessment of  
\$150,000 on Binghamton real estate will

	amount to about one and one-half per cent, or.....	\$2,200
	Insurance on \$100,000 dwelling one-quarter of one per cent. per annum .....	\$250
2296	On Dwight House, \$50,000 one and one half per cent. per annum.. .....	\$750
	Wear and tear as per schedules "A " and " B " on \$170,000 improved property, not less than one and one-half per cent. per annum.....	\$2,550
	NOTE.—For past two years it has averaged over two per cent.	
	Cost of renting, making leases, collecting and generally taking care of the property, one per cent. per annum on \$150,000 .....	\$1,500
2297	Taxes on Western lands about \$700 per annum.....	\$700
	Total.....	\$24,610

There will necessarily be an annual expenditure above income of about \$10,000 a year for some time to come. This does not include taxes on Canada stock, which amounts to about \$1,200 per annum.

This annual deficit of \$10,000 a year, added to the schedule valuation for three years, would make the property stand in the sum of \$270,000, an amount quite as large as the property would bring, judging from the present general business outlook.

2298 If, after reviewing this matter, it is deemed expedient on the part of the bank to keep such security as they have at present, and cancelling all indebtedness, all arrangements and all litigations against or with Harper Dusenbury, Walton Dwight, Anna N. Dwight and George B. Edwards down to an amount not exceeding \$60,000, Walton Dwight will agree to, and will give in consideration for same, note for said amount of \$60,000, same security as the \$55,000 now held against Dusenbury, renew

same semi-annually or quarterly for the term of three years from January first, 1877, pay the interest promptly on all mortgages and notes, pay all taxes and insurance, and in every and all ways keeping the property in as perfect order as it has been heretofore.

2299

In addition, Walton Dwight, without further consideration, will surrender and transfer to the bank all his right, title and interest in all stock, and Binghamton Daily and Weekly Times.

Or instead of the above proposition, Walton Dwight will release, set over and transfer to the bank all property owned or held by him, of any kind or nature, excepting only life insurance.

In consideration of the same the bank shall cancel and release all claims of every kind and nature against Walton Dwight, Anna N. Dwight and George B. Edwards.

The two above mentioned propositions are the only ones that can be made and carried out by Walton Dwight, unless he makes an assignment and looks for the Court for his discharge.

2300

In the first proposition Walton Dwight has to raise within the ensuing three years, in addition to the earning of the total property, some \$30,000. This he will have to raise through his friends, they taking their security in the increased value of the property, if there be any, and in the presumption that Dwight will eventually work out and pay the indebtedness by the sale of the property within the three years.

2301

If the property has been fairly appraised the advantages, if there be any, are all in favor of the bank in this arrangement.

The second proposition proposes to give up everything, all that could seemingly be asked of an individual at the hands of a corporation.

In conclusion it is respectfully presented for the serious consideration of the officers of the bank, *the fact* that in case of foreclosure and sacrifice of



this property, and the general breaking up of an enterprise that has been, and promises to be, of great benefit to the City of Binghamton, a shock will be produced that will affect and depress the real estate and business prospects for some years to come.

2302 Early action on the part of the bank in this matter seems imperative, as the 31st ends the grace for past due interest on the mortgages.

In case of foreclosure, unless the bank bids in the property, its security goes to the \$55,000 at the end of the present litigation with Dusenbury.

All of which is respectfully submitted.

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**Exhibit M.**

[Read at page 292.]

2303

JOSEPH F. KNAPP, *President.*

JOHN R. HEGEMAN, *Vice-Pres.*

STEWART L. WOODFORD, *Counsel.*

METROPOLITAN LIFE INSURANCE COMPANY,

Corner Park Place and Church St.,

NEW-YORK, Sept. 6, 1878.

P. K. BURHANS, Esq.,  
Binghamton, N. Y.:

2304 *Dear Sir.*—At the last moment received your telegram asking us to reduce Dwight's application to \$5,000. We might expect such a thing as this from any other man, but from you never. Before answering the note sent you earlier in the day, see if you cannot keep the amount in its present sum of \$10,000. Don't spoil a good thing.

Yours very truly,

JOHN R. HEGEMAN.

**Exhibit N.**

[Endorsement on Policy Pocket—Read at page 502.]

Please notify the company of any change in your address.

THE GERMANIA LIFE INSURANCE COMPANY, 2305  
287 Broadway, New-York.

Policy Number 69,096 on the life of *Walton Dwight*.

Amount, \$15,000. Date *Aug. 28, 1878*.

*Quarterly* premium, \$131.53.

Payable on the *28th* day of *Nov., Feb., May & Aug.*

Premium \$131.55 }  
Policy fee, 1 } \$132.55.

*H. C. Hermans,*  
Agent, 2306

**Exhibit 1.**

[Read at page 66.]

Application to the Mutual Life Insurance Company of New York, for insurance on the life of  
 2308 Walton Dwight.

Dated Binghamton, July 31, 1878.

Amount applied for, \$25,000.

Kind of policy, plain life.

The residence of the applicant is stated to be Windsor, and place of business "mostly Chicago";  
 "general dealer in grain and produce."

(Signed) WALTON DWIGHT.

Annexed to the application were the following :  
 Letter dated December 13, 1880, addressed to N. B. Freeman by J. S. Winston ; letter Dated December 11th, 1880, addressed to the Mutual Life Insurance  
 2309 Company by N. B. Freeman ; telegram dated August 16th, 1878, addressed to I. F. Lloyd by F. P. Brown ; letter dated August 12, 1878, addressed to F. P. Brown, and purporting to be signed by Walton Dwight.

**Exhibit 2.**

*Two Medical Examiners' Report annexed to Exhibit 1, supra.*

[Read at page 73.]

- 2310 1. Give name in full of the person examined. Do you know him to be the person upon whose Life Insurance is asked in the application, and the same person described in forms A and B? Are his residence and occupation there correctly stated? } Yes.  
Yes.
- Name—*Walton Dwight.*
2. Is the risk affected by anything in his residence or occupation? } No.

3. A. Give his weight. B. Height. C. Measure of chest under clothing. D. At forced expiration. E. On full inspiration. F. Number of respirations per minute. G. Figure and general appearance. H. Measure of abdomen. I. Race. K. Describe color of eyes and hair, and any special marks of identification. 2311

A. 240 lbs. B. 6 ft. 2 inch. C. 42. D. 40. E. 45. F. 16 per minute. G. *Stout, erect, excellent.*

H. 4—. I. *Caucasian.* K. *Blue eyes, light brown hair.*

4. A. Is the respiratory murmur clear and distinct over both lungs? B. Is the character of the respiration full, easy and regular? C. Is there entire absence of indications of disease of the organs of respiration or their appendages?

A. *Yes.* B. *Yes.* C. *Yes.*

5. A. Is the character of the heart's action uniform, free and steady? B. Are its sounds and rhythm regular and normal? C. Is there entire freedom from indications of disease of this organ or of the blood vessels? 2312

A. *Yes.* B. *Yes.* C. *Yes.*

6. A. State the rate and other qualities of the pulse. B. Does it intermit? C. Is it irregular or unsteady? The rate of pulse must be written out in full.

A. *Seventy per minutes.* B. *No.* C. *No.*

7. Has the party ever had any serious illness, constitutional disease or injury? If so, state expressly: A. How long since? B. Its nature? C. Its duration? D. Whether any effect is perceptible on the heart, lungs, kidneys or other organs? 2313

A. *Never except—*B. *flesh wound in the—*C. *thigh in the army, all—*D. *right now (during war).* *No.*

8. Is there anything discovered by you which in-

fluences the character of the risk, and which is not fully set forth in the answers? *Nothing.*

2314 9. A. In your judgment, is the person examined safely insurable? B. Do you think it advisable to seek for any further information concerning him from his medical adviser, or from any other source? If so, have you requested the person examined to obtain from his medical adviser the "Attending or Family Physician's Certificate" upon the form provided by the Company? A. *Yes.* B. *No.*

In reviewing the family record, the medical examiner should invariably explain obscure causes of death, such as "Dropsy," "Change of Life," "Cold," "Exposure," "Childbirth," "Debility," etc., and in case the applicant states he "does not know" the cause of death or duration of illness, the medical examiner should ascertain and state the reason why; and should question and report upon the point of possible hereditary diseases.

2315 I certify that the answers to the questions above are in my own handwriting, and that I have made in private a physical examination of the person proposed for insurance.

Dated at *Binghamton, N. Y.*, this 31st day of *July*, 1878:

*D. P. Jackson, M. D.,*  
Medical Examiner.

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2316 THE MUTUAL LIFE INSURANCE COMPANY OF  
NEW-YORK.

To the Medical Examiner :

Sir.—If, from any circumstances, the history of *the applicant* suggests disease of the urinary organs (such as pallor, recent impairment of the vision, dyspepsia, dyspnœa, swelling of feet, irre-



gular micturition, or unnatural changes in quantity or appearance of urine), and *in all cases where the application is for \$10,000 and over*, the Examiner is required to make an examination of the urine, and report its condition as to the following particulars. The urine should be examined within 24 hours after its passage :

2317

1. Name of applicant? *Walton Dwight*. Was specimen passed by him? *Yes*.

2. Color? *Light amber*. Acid or Alkaline? *Slightly acid*. Specific gravity? *1022*.

3. Does it contain Albumen? *No*. Or sugar? *No*.

4. Does the microscope show the presence of casts, blood corpuscles, or pus corpuscles? *No*. *The urine appears to be normal in every respect*.

Dated at *Binghamton, N. Y.*, Aug. 1st, 1878.

*D. P. Jackson, M. D.,  
Medical Examiner.*

2318

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**Exhibit 3.**

[Read at page 76.]

THE MUTUAL LIFE INSURANCE COMPANY OF  
NEW-YORK.

140 to 146 Broadway.

NEW YORK, August 27th, 1878. 2319

F. P. BROWN, Esq.,  
Yonkers, N. Y.

*Sir*.—Be good enough to return policy 192, 196.  
W. Dwight at your earliest convenience.

Yours truly,

I. F. LLOYD,

*Sec'y.*

**Exhibit 4.**

[Read at page 76.]

BINGHAMTON, Aug. 27, /78.

F. P. BROWN, Esq.,

*Gen. Agt. Mut. Life.*

- 2320     *Dear Gen.—I enclose Dwight's Policy. What has come to the surface? I would like to know!!*  
 Col. Dwight (I hear) is down to the city of New-York—is expected back to-day.

Yours respt.,

D. C. VOSBURY.

(I send the telegram.)

**Exhibit 5.**

- 2321     [Entries contained in Policy Register of D. C. Vosbury, Agent, at Binghamton, of Mutual Life Insurance Company, of New-York. [Read at page 78.]

*"Date of Policy, August 19, 1878; Amount, \$10,000; Term, 15 year life; Applicant, Frank Dwight; Life Insured, Walton Dwight; Remark, Semi-annual; Number of Policy, 192,196; payable 1, 2 a; not delivered as per order of the company."*

**Exhibit 6.**

2322

[Read at page 81.]

Application to the Connecticut Mutual Life Insurance Company, of Hartford, Conn., for insurance on the Life of Walton Dwight.

Dated Binghamton, N. Y. 31st July, 1878.

Amount applied for, \$25,000.

Kind of Policy, Life.

Premium to be payable semi-annually.

Person for whose benefit insurance to be effected,  
Frank Dwight, son of Walton Dwight.

Application contains the following question :

“Q. 8th. Have you ever had any of the following diseases: answer yes or no opposite to each,  
\* \* \* \* Spitting of blood? 2323

A. No, only from teeth \* \* \* \*

Q. 12. State your family history \* \* \* \*

A. Mother died ; about age thirty-five or thirty-seven ; cause of death, consumption.”

To this application is attached a medical examiner's certificate, dated Binghamton, N. Y., 12th August, 1878 ; signed J. B. Orton, M. D.

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**Exhibit 7.**

[Read at page 82.]

2324

CONNECTICUT MUTUAL LIFE INSURANCE CO.

Assets January 1, 1877, over \$46,000,000.

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Eleazer A. Peck.

Joseph Hillman.

PECK & HILLMAN,

General Agents, State of New York.

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TROY, N. Y., Aug. 5, 1878.

L. HARDING,

Binghamton, N. Y.,

2325

*Dr. Sir.*—In case of Walton Dwight, examining physician at Hartford, asks information as follows :  
“When did he first begin to suffer from trouble in stomach ? History of the trouble. Get an examination of his urine.”

We are also notified that Dr. J. G. Orton must be employed to make examinations.

Yours truly,

PECK & HILLMAN,  
C. Bd.

2326

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**Exhibit S.**

[Read at page 83.]

Policy of Insurance of the Connecticut Mutual Life Insurance Company, insuring the life of Walton Dwight.

Dated August 16th, 1878, at Hartford, Connecticut. Amount, \$15,000.

Premium, \$486.30, payable annually on the 16th day of August in each year.

2327 Term, natural life.

Benefit of Frank Dwight, son of the insured, or his legal representatives.

Policy issued subject to conditions and agreements specified, one of which is to the effect that the application is to be taken as a part of the contract of insurance.

On the fly leaf is written a copy of the application, and annexed thereto is a copy of a letter purporting to have been written by Walton Dwight to Lowell Harding on the 12th day of August, 1878. [See Exhibit 14.]

2328

On the second page of this Policy is the following provision :

“This Policy is issued and accepted upon the following express conditions and agreements referred to on the first page and made a part of this contract.”

\* \* \* \* \*

“2nd. That the Policy shall not be in force and binding on this Company until the advance premium hereon shall have been actually paid during the lifetime of the insured.”



BINGHAMTON, N. Y.,  
*August 12th, 1878.*

LOWEL HARDING, Esq.:

Dear Sir :

I was troubled with something like dispepsia some ten years ago nothing serious, had no more of it until last spring in changeing climate—from here to Chicago. I seemed for two or three weeks to git generally out of sorts. There was nothing serious however. At present I am free from all ills so far as I know and believe I am a sound man. I would refer you to Dr. Orton, one of our oldest physicians. He has known me for many years and has examined me for Life Insurance and is probably better able to give an inteligable and valuable opinion as to myself as a risk than any other Dr. here. The Equitable took me for \$40000 after making a rigid examination of me some four years since I had \$10000 with them before makeing in all \$50,000 About a year or two ago I got frightened and thought every thing was going to pieces and took a paid up policy for \$40,000 I only mention this that you can see that for years I have been considered a good risk.

Hastily yours

WALTON DWIGHT.



**Exhibit 9.**

[Read at page 84.]

Receipt for  
First H. Y.  
Payment.

OFFICE OF CONNECTICUT MUTUAL LIFE  
INSURANCE Co.,  
HARTFORD, August 16th, 1878.

Due this day payment as per margin to insure the life of 2329  
Walton Dwight for six months from the date hereof under the  
Policy No. 151,227, authority is hereby given to L. Harding,  
Agent at Binghamton, to receive the stated amount, and receipt  
for the same hereon.

JOHN M. TAYLOR,  
*Secretary.*

By mutual agreement (see Policy) if  
payment be not made on or before the day when  
due, the above Policy will cease and determine,  
and become and be wholly null and void, and it  
can afterwards be restored only by consent of  
the Company. No Agent has authority, in any  
case, to waive or postpone payments of  
premium, or to make binding or continue any  
Policy of Insurance, and the assured is hereby  
notified that the only evidence to him of the  
authority of any Agent to receive any premiums  
on account of this Policy, is a receipt in printed  
form signed by the President or Secretary of this  
Company.

2330

(MARGIN.)  
No. 151,227.

*The Annual Premium on this Policy is  
payable in Semi-Annual Installments in  
advance.*

*Semi-Annual Pay't - - - \$252.88*

2331

*Extra Premium - - -*

*Total Cash - - - \$252.88*

*Received amount as above this day*

*of 1878.*

*By*

**Exhibit 10.**

[Read at page 86.]

CONNECTICUT MUTUAL LIFE INSURANCE CO.,

Hartford, Sept. 12, 1878.

2332

MESSRS. PECK &amp; HILLMAN:

*Gents.*—[The additional information furnished us in the case of Walton Dwight, has been submitted to our \*] Medical Examiner, who, after careful consideration of the case has declined to accept a risk on his life. You will therefore please return the policy to us.

Resp'y,

J. L. GREENE,  
*Prest.*  
E.

2333

**Exhibit 11.**

[Read at page 86.]

CONNECTICUT MUTUAL LIFE INSURANCE CO.,

Hartford, Sept. 19th, 1878.

PECK &amp; HILLMAN, Troy, N. Y.:

2334

*Gentlemen.*—I beg to advise that upon further consideration, this company re-affirms its decision to decline the application of Walton Dwight. Please return the policy and receipt and inform Col. Dwight of his rejection without delay.

Respectfully yours,

JOHN M. TAYLOR,  
*Secretary.*

---

\*Excluded by Court.

**Exhibit 12.**

[Read at page 90.]

THE WESTERN UNION TELEGRAPH COMPANY.

Dated TROY, N. Y., 2 [Aug.\*], 1878.

2335

Received at 3:09 P. M.

To LOWELL HARDING :

If Walter Dwight policy is not delivered, hold  
it for further advice.

PECK &amp; HILLMAN.

**Exhibit 13.**

2336

[Read at page 90.]

CONNECTICUT MUTUAL LIFE INSURANCE Co.

Assets January 1, 1877, over \$46,000,000.

ELEAZER A. PECK.

JOSEPH HILLMAN.

PECK &amp; HILLMAN,

General Agents State of New-York.

2337

Troy, N. Y., Aug. 19, 1878.

JOHN M. TAYLOR, *Sect'y*,  
Hartford.

*D'r Sir*.—Enclosed please find pol. and rec'pt

---

\*Should be September.



No. 151,054, O'Reilly, which we return in compliance with y'rs of recent date cancelling the risk.

Also find prem. rec'pt No. 151,227, Walton Dwight. Mr. D's appl'n called for semi-annual pay'ts; please make correction.

Y'rs truly,

2338

PECK & HILLMAN.

C. B'd.

#### Exhibit 14.

[Read at

BINGHAMTON, N. Y., Sept. 2d, 1878.

2339 *To the Secretary of the Connecticut Mutual Life Insurance Company.—I herewith submit the corrections and additional statements written below, in and to the application for insurance upon which policy No. 151,227 was issued of date 18     , and request that the same be reviewed by the Officers of the Company, and that said Policy be validated and restored to force and effect if they so determine. [Here insert the corrections or additional statements referring to the questions and answers in the application by numbers.]*

The only portion of my letter to Lowell Harding, your ag't at Binghamton, I desire to correct :  
 2340 "I say that I got frightened and took a paid up Policy of the Equitable for \$40,000," &c. This should have read that I took a paid up Policy for the surrender value of the \$40,000, and no longer ago than the 27th August I was in their Office, when I was led to infer that they would be glad to write me up again for the full am't which I have made application for and expect now, gentlemen, if you consider me a good risk, all right, but understand I don't want your insurance any more than

you want my premiums unless you are fully satisfied.

Respectfully and Hastily Yours,  
WALTON DWIGHT.

*I agree that the above corrections and statements shall form a part of the said application, and be* 2341  
*subject to the agreements and warranties therein contained in all respects as fully and completely as if the same had been originally set forth in said application.*

---

**Exhibit 15.**

[Read at page 94.]

Blank No. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

This company transmits and delivers messages only on conditions limiting its liability which have been assented to by the sender of the following message. 2342

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeatd messages.

This message is an unrepeatd message, and is delivered by request of the sender, under the conditions named above.

WILLIAM ORTON, *Pres't.*

A. R. BREWER, *Sec'y.*

Dated TROY, N. Y., 16th Sep. 1878.

Received 9:50 A. Bing.

TO LOWELL HARDING.

Home Office have the Dwight case under consideration. Will have decision in day or two. 2343

PECK & HILLMAN.

15 paid, S.

Read the notice at the top.

---

**Exhibit 16.**

Bottle introduced in evidence at page 131.

**Exhibit 17.**

[Read at page 172.]

- Application to the John Hancock Mutual Life Insurance Company for insurance on the life of  
 2344 Walton Dwight.  
 Dated Binghamton N. Y., August 21, 1878.  
 Amount applied for \$10,000  
 Kind of policy—Life.  
 Benefit of—self, heirs or assigns.  
 Premium payable quarterly.

**MEDICAL EXAMINER'S CERTIFICATE.**

Examination of Mr. Walton Dwight of Windsor.  
 Questions only to be asked by medical examiner  
 and answered only by the person examined.

- Q. What is your occupation; state full particulars? A. Real estate and grain dealer.

- 2345 Q. Present state of health? A. Good.

Q. Have you ever been predisposed or subject to or afflicted with any of the following diseases or infirmities, if so, state how recently, and full particulars?"

Then follows a list of various diseases and infirmities to which a separate answer is given to each, namely, Coughs prolonged? A. No.

Q. Diseases of the lungs? A. No.

Q. Spitting blood? A. No."

- 2346 Opposite these answers is the statement, "while becoming acclimated to the climate of Chicago I was sick some three weeks; was lame something like rheumatism of the muscles; stomach was troubling and was generally out of sorts. Was prescribed for some three or four times by Dr. Allan Brooks of Chicago when I fully recovered and have been well since.

Q. Have you ever had any other serious illness or wounds or accidents? A. Was slightly wounded in the thigh during the war.

Q. Have you ever been examined before for life insurance, and if so, state when and by what company? A. Yes, sir; have policies in all the leading companies and in some of which have paid up policies now. Never been rejected.

Following this are questions relating to family history. As to his mother he states the age at death to have been thirty-five and the cause of death "some pulmonary disease, the nature of which I do not know." And later, in answer to another question whether either of his parents or maternal or paternal grand parents or any of their descendants as far as known have had consumption, bronchitis, etc., if so please state the time, degree and duration and effect on health? He answers "Mother died of some pulmonary disease at the age of thirty-five. 2347

Q. Are you aware that any untrue or fraudulent answers to the above question or any suppression of facts in regard to your health will vitiate the policy? A. Yes. 2348

"I, Walton Dwight, of Windsor, County of Broome, State of New-York do hereby make application to the John Hancock Mutual Life Insurance Company for insurance on the life of self to the amount of \$10,000 for a term of life, and with that view and as a basis for such insurance, make the following statement including those made to the Medical Examiner, which it is hereby mutually agreed shall form a part of the contract for this insurance.

The name of the person for whose benefit policy is made payable. Heirs or assigns. 2349

Q. Has any life insurance company, through its officers, medical examiner or agents, declined or postponed insurance on the life proposed? A. No.

Q. Is the life of the person proposed now insured? A. Yes, small paid up policy in this company; Equitable Life, \$10,000; Connecticut Mu-

tual, \$15,000 ; Washington Life, \$10,000 ; New-York Life, \$10,000.

Q. Have you ever applied to any other company except as stated to answers of questions 6 and 7, and if so was a policy issued ? A. I have ; and the policies were issued.

2350 Q. Are all statements above written in your handwriting, and if not do you acknowledge them to be as binding as if written by you ? A. I do acknowledge it to be as binding as if written by me.

Dated Binghamton, August 21, 1878.

(Signed) WALTON DWIGHT,  
*Applicant.*"

At the head of the application "To be filled only at the home office. Received at Boston August 22, 1878 ; kind of policy, life ; August 21, 1878 ; amount insured \$10,000, page 41 ; annual rate \$326 ; premium payable quarterly \$83.60.

2351

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**Exhibit 18.**

[Read at page 172.]

Application to the Penn Mutual Life Insurance Company for Insurance on the Life of Walton Dwight.

Amount applied for, \$10,000.

2352 Kind of Policy, Life.

Benefit of "his only son Frank Dwight."

Premium, payable quarterly.

"Present occupation and previous occupation, state exactly what ?" Answer by applicant, "Real Estate and Grain Dealer."

Q. Is the party engaged in the manufacture or sale of beer, wine or any other intoxicating drinks ? Has he ever been so engaged ? State full par-



ticulars? A. No ; excepting keeping hotel about three years where liquor was sold by the package ; no bar.

Q. Has he ever been afflicted with or subject to any of the following diseases? Answer each one separately and state particulars in margin : Bronchitis? No. Pneumonia? No. Rheumatism? 2353  
I have never had any sickness since last spring ; I went to Chicago and while becoming acclimated I was ill for about three weeks ; stomach trouble ; was also lame, supposed to be muscular rheumatism ; I was prescribed for 3 or 4 times by Dr. Allan Brooks, when I entirely recovered and have been well ever since.

Q. Has any near relative been affected by or died of consumption or other diseases specified? And later, where questioned as to the cause of death of his mother and the length of her sickness, etc., the applicant states that "She died at 35 of consump- 2354

"Q. Has the party his life insured ; if so, give the name of each company and the amounts in each, with the kind of policy? A. Yes ; see lower margin."

He says : "I have had, since 1868, about \$120,000, in various companies, as the Equitable, Washington, Germania, Franklin, John Hancock, Widows and Orphans, Universal, National, New-York and the Craftsmen's, and a number that have failed. I have taken paid-up insurance in most companies, and I desire now to have insurance in sound companies.

Q. Has any proposal or application to insure the life of said party, ever been made to any company or agent, upon which a policy has not been issued, or are any negotiations now pending with any party for a policy on his life? If either, state full particulars? A. No. 2355

Q. Is there any other information respecting the present or former habits, health and circumstances of said person, with which this company ought to

be made acquainted, as likely to influence it in issuing the policy? Is the party aware that any untrue or fraudulent allegation or omission made in this application for insurance, will render the policy void, and that all premium payments made thereon, and dividend credits accruing therefrom, will be forfeited? Has he fully understood the question which he has answered above? A. Yes.

(Signed) WALTON DWIGHT."

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**Exhibit 19.**

[Read at page 172.]

Application to the Phoenix Mutual Life Insurance Company, of Hartford, Connecticut, for insurance on the life of Walton Dwight.

2357 Dated August 15th, 1878,  
Amount applied for, \$10,000.  
Kind of policy, life.  
Benefit of  
Premium payable, quarterly.

The business or occupation of Walton Dwight is stated to be "real estate and grain dealer."

"Q. 13. Have you ever had any of the following diseases or disorders"—included in the list that follows, to which separate answers are required, are, "bronchitis, consumption, pleurisy, pneumonia, rheumatism, spitting blood." "State the particulars, date, character and duration of all the diseases you have had? A. Last spring, in changing from here to Chicago, I was generally out of sorts; had rheumatism and trouble with my stomach; was sick some three weeks, and was prescribed for by Dr. Allan Brooks, of Chicago, some 3 or 4 times, when I was fully recovered, and have been well since. In 1869 I had something like dyspepsia,

but no trouble since." To all these questions the answers were, "No; only as above."

"Q. Have you, during the past seven years, had any disease or severe sickness? A. "No.—If so, state the particulars in each case, and the name and residence of the attending physician? A. No; except in answer to number 12. 2359

Q. Are you now, or have you ever been, addicted to the use of any spiritous liquors? A. No.

Q. What is the name and residence of your family physician, or the one whom you have usually employed or consulted? A. Dr. J. G. Orton of Binghamton.

Q. What is the name and residence of an intimate friend? A. Neri Pine, of the same place.

Q. Are you aware that any untrue answers to the above questions, or a suppression of facts in regard to your health, habits or circumstances, will vitiate the policy and forfeit all premiums thereon? A. Yes. 2360

Q. Have you carefully read over the questions and answers thereto? A. Yes.

Q. Do you understand that all policies, to be binding upon this company, must be signed by its president, vice-president or secretary? A. Yes.

(Signed) WALTON DWIGHT."

(Endorsed) "Agent of Brown, at Binghamton, New-York. Received 19th day of August, 1878."

2361

**Exhibit 20.**

[Read at page 172.]

Application to the Globe Mutual Life Insurance Company for an insurance on the life of Walton Dwight.

Dated August 20, 1878.

Amount applied for, \$15,000.

Kind of policy, ordinary life.

Benefit of heirs or assigns.

Premium payable quarterly.

Date of commencement, when the risk is accepted.

**2362** In answer to the question as to business or occupation, the answer is, "Real estate and grain dealer."

"Q. 13. Has the party been afflicted since childhood with any of the following complaints? Answer opposite each query—Diseases of lungs or air passages, spitting blood, bronchitis"; written opposite each is, "See margin." In margin is the following, "Last spring in changing from here to Chicago, I was generally out of sorts; had rheumatism and trouble with my stomach; was sick some three weeks, and was prescribed for by Dr. Allan Brooks of Chicago some three or four times, when I was wholly recovered, and have been well since then. In 1869 I had something like dyspepsia, but nothing serious; no trouble since."

To all the questions embraced in this list the answer was, "No, only as above."

In answer to the question calling for name and residence of party's usual medical attendant, or if having none, of some other medical person than the Examiner to be referred to as to information in regard to his health, the answer is, "No usual medical attendant, but would refer to Dr. George Burr, Binghamton, N. Y."

**2364**

(Signed) WALTON DWIGHT."

CERTIFICATE BY ONE OF THE FRIENDS REFERRED TO IN THIS APPLICATION.

1. How long have you known Mr. <i>Walton Dwight</i> ?	<i>About ten years.</i>			
2. A. Are his habits of life correct and temperate?	A. <i>Yes, so far as I know.</i>	B. <i>Yes, so far as I know.</i>		
3. Is he afflicted with any bodily defect?	<i>No.</i>			
4. Has he ever been seriously ill?	<i>No ; not to my knowledge.</i>			
5. Does he ordinarily enjoy good health?	<i>Yes.</i>			
6. Please state to the best of your knowledge, his	AGE.	HEIGHT.	WEIGHT.	COMPLEXION.
7. How would you rate the risk: <i>AA1, A1, 1, 2 or 3?</i>	<i>About 40.</i>	<i>6 ft. 3 in.</i>	<i>225.</i>	<i>Gray.</i>
	<i>AA 1.</i>		<i>Brown.</i>	<i>Light.</i>

Dated at *Binghamton*, this *22d* day of *August*, 1878.

*R. H. ROOT.*

Risk approved, *Dr. Chas. Bernacki.*

IT IS REQUESTED THAT NOTHING BE WRITTEN ON THIS SIDE.

GERMANIA  
LIFE INSURANCE COMPANY,  
No. 287 Broadway, New York.

APPLICATION

OF

FOR AN ASSURANCE ON THE LIFE OF

*WALTON DWIGHT,*

Residence, *Windsor, N. Y.*

No. of Policy, *69,096.* Amount, *\$15,000.*  
 $\frac{1}{4}$  Premium, *\$131.55.*  
Due, *28 Nov., Feb., May & Aug.*  
Term of Policy, *Life.*  
Date of Policy, *August 28, 1878.*  
Age, *41 years.*

Agent, *H. C. Hermans.*

at

*May, 1874.*

S. Benedicks & Co., 368 Broadway, New-York.

CERTIFICATE BY ONE OF THE FRIENDS REFERRED TO IN THIS APPLICATION.

1. How long have you known Mr. <i>Walton Dwight</i> ?	<i>25 years.</i>			
2. A. Are his habits of life correct and temperate?	A. <i>Yes.</i>	B. <i>Yes.</i>		
3. Is he afflicted with any bodily defect?	<i>No.</i>			
4. Has he ever been seriously ill?	<i>No.</i>			
5. Does he ordinarily enjoy good health?	<i>Yes.</i>			
6. Please state to the best of your knowledge, his	AGE.	HEIGHT.	WEIGHT.	COMPLEXION.
7. How would you rate the risk: <i>AA1, A1, 1, 2 or 3?</i>	<i>40.</i>	<i>6 ft. 3 in.</i>	<i>225.</i>	<i>Gray.</i>
	<i>AA 1.</i>		<i>Light.</i>	<i>Light.</i>

Dated at *Binghamton*, this *22d* day of *August*, 1878,

*NERI PINE.*



\* Some two years prior to Father's death, while removing an apple tree in home grounds, he was struck across the stomach with a lever, from the effects of which disease something like inflammation between the upper and lower stomach set in, from which he died. We never knew exactly what it could—called. Had it not been for this Father bid fair to live as long as his father.

N.B. 1) Persons proposing an Assurance are requested to answer ALL the questions.  
2) No erasures are admissible. Unavoidable alterations must be acknowledged by initials.

ibit21.

# Germania Life Insurance Company,

## 287 BROAD WAY, NEW-YORK.

Particulars and Declaration required from the Applicant for Life Insurance and the Person whose Life is proposed to be assured.

1. For the party to whom the amount of the policy is to be made payable, state the <small>(If a wife, give maiden name also.)</small>	Name at full length, <i>Heirs or assigns.</i>			
	Residence,	County of	State of	
	Relationship to party to be assured,			
2. A. For the party whose Life is proposed to be assured, state the	Name at full length, <i>Walton Dwight.</i>			
	Residence, <i>Windsor,</i> County of <i>Broome,</i> State of <i>N. Y.</i>			
	Place of Business, <i>Broome Co., N. Y., &amp; Chicago.</i> Business, <small>carefully specified,</small> <i>Real Estate and Grain Dealer.</i>			
B. Is this business his own, or does he work for other persons and in what capacity?	<i>His own.</i>			
C. In what occupation has he been engaged during the last 10 years?	<i>Real Estate and Grain Dealer.</i>			
D. Is he now or has he been engaged in or connected with the manufacture or sale of any beer, wine or other intoxicating liquors?	<i>No.</i>			
3. Amount to be assured,	10,000	<i>Ten or fifty Thousand Dollars.</i>		
4. State exactly what kind of Policy is desired by filling up one of the marginal blanks with the word "Yes" adding the number of years where needed. (C., D. & E.)	A. Life Insurance—Premiums during life—ordinary— <i>Yes.</i> B. Life Insurance—Premiums during life—Tontine, C. Life Insurance—Premiums during        years—ordinary, D. Life Insurance—Premiums during        years—Tontine, E. Endowment Assurance for        years, F. Endowment Assurance for the expected duration of life, <small>N. B.—Such a policy becomes due at the time when the Company's Mortality Table expects the assured to die.</small>			
5. Whether the premiums shall be payable: yearly, half-yearly or quarterly?	<i>Quarterly.</i>			
6. A. Whether the party to be assured is now or has been insured in this Company? If so, state the number of the Policy and the amount. B. Whether in other Companies? in which, and for what amount in each? State exactly on what kind of Policy. C. Whether an Assurance has been applied for with this or any other Company without having led to an Assurance? If so, with which Companies? and for what reason did the application not lead to an assurance?	A. <i>Yes; has paid up Policy for about \$800. Don't know No. of Policy.</i>  B. <i>Yes; N. Y. Mutual, 15 year Endowment, 10,000; Conn. Mutual, Ordinary Life, 15,000; Washington, Ordinary Life, 10,000; Equitable, Ordinary Life, 10,000.</i> C. <i>No.</i>			
7. Place and Date of Birth of the party whose life is to be assured? <small>N. B.—It is indispensable that the date of birth be correctly stated in writing and not in figures.</small>	<i>Born December twentieth, eighteen hundred and thirty-seven, Windsor, Broome Co., N. Y.</i>			
8. Is the same Married or Single?	<i>Married.</i>			
9. What interest has the applicant in the life of the assured? if it consists in a debt, what is the amount of it?				
10. How is the present state of health of the party whose life is to be assured?	<i>Good.</i>			
11. Is the same afflicted with any bodily defect?	<i>No.</i>			
12. A. How has the state of the party's health been heretofore? B. Has the same ever been afflicted with any serious illness, defect or personal injury?	A. <i>Good.</i> B. <i>No.</i>			
13. A. What physician or surgeon has attended the same in such illness? B. Who is at present the party's usual medical attendant?	A. B. <i>Don't have any.</i>			
14. When has the party been vaccinated for the last time?	<i>Within the last ten years.</i>			
15. A. Has the party ever resided south of the southerly lines of Virginia, Kentucky, Missouri and Kansas? if so, where, when, and how long? B. Has the same had the disease incident to the climate of such residence? Has the same had the yellow fever?	A. <i>No.</i> B.			
16. Has the party now or has the same ever had any of the following diseases: <div>Spitting of Blood,      Asthma,      Paralysis,      Small-pox, Bronchitis,              Rapture,      Apoplexy,      Palpitation, Consumption,            Fistula,      Colic,          Disease of the Heart, Urinary Liver Complaint,        Dropsy,      Gout,          Organs, or any other Rheumatism,            Insanity,    Fits,          important organ?</div>	<i>Last Spring, while in Chicago, I was generally out of sorts. Had Rheumatism and trouble with my stomach. Was sick some three weeks. Was prescribed for by Dr. Allen Brooks, of Chicago, some three or four times. When I was wholly recovered, and have been well since. In 1869 I had something like Dispepsia but nothing serious. No trouble since. To all these questions in No. 13 answers No only as above.</i>			
17. Are the functions of the Brain, the Nervous and Muscular Systems, the Lungs, Heart, the Abdominal and Urinary Organs in a healthy state?	<i>Yes.</i>			
18. A. State, if the party's parents are alive, what are their ages, and the state of their health? B. If dead, at what ages and of what diseases did they die?	FATHER <i>Dead.</i>	A. AGE AND STATE OF HEALTH, IF LIVING.  B. AGE AT DEATH. <i>About 59.</i>	B. CAUSE OF DEATH. <i>Injury to stomach. See margin.*</i>	
	MOTHER <i>Dead.</i>	A.  B. <i>About 35.</i>	B. <i>Called Consumption.</i>	
19.	HOW MANY HAS THE PARTY HAD?	HOW MANY ARE LIVING? WHAT ARE THEIR AGES AND THE STATE OF THEIR HEALTH?	HOW MANY ARE DEAD, AND AT WHAT AGES DID THEY DIE?	OF WHAT DISEASE DID THEY DIE?
Brothers. }	2 <i>Two.</i>	<i>One, about 22. Health good.</i>	<i>One, about 21.</i>	<i>Chronic Diarrhea in the Army.</i>
Sisters. }	3 <i>Three.</i>	<i>Three, their ages about 33, 29 &amp; 26, all in good health.</i>		
20. Have the party's parents, brothers or sisters been afflicted with Pulmonary, Scrofulous, or any other constitutional Disease, hereditary in its character?	<i>No, except Mother.</i>			
21. Are the party's habits of life correct and temperate, and have they always been so?	<i>Yes.</i>			
22. Exact address of two intimate friends to whom the party refers.	<i>Neri Pine and R. H. Root, Binghamton, N. Y.</i>			
23. Can you communicate any material fact in regard to the health of the party whose life is to be assured, or to the Insurance Contract, which has been omitted in the above questions? <small>(In answering this Question, women have to state whether they are now pregnant: how many children they have born, and how many are living now.)</small>	<i>No.</i>			
24. Are you aware that this Contract of Assurance becomes valid only by the payment of the first premium, and that it becomes void whenever the future premiums shall not be paid on or before the days on which they become due, irrespective of any Reversionary Dividend with which the Policy may be credited?	<i>Yes.</i>			

It is hereby declared, that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that the above statements shall form the basis of the contract for Insurance, and also that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the premium on or before the day it becomes due, will render the Policy null and void, and forfeit all payments made thereon; also, that the Policy of Insurance hereby applied for shall not be binding upon this Company, until the amount of premium, as stated therein, shall be received by said Company, or some authorized Agent thereof, during the life-time of the party therein insured. And it is also agreed, in case the party whose life is proposed to be assured reside at present in the Southern States, that no extra charge being made by the said Company for such residence, the Policy hereby applied for be placed, if issued, in the "Southern Class" of Policies, and receive such dividends as the Board of Directors, with reference to the mortality of such class, may declare.

Dated at Binghamton, this 22d day of August, 1878.

Witness, H. C. HERMANS.

Signature of the Applicant, WALTON DWIGHT.

Signature of the Party whose life is to be assured, WALTON DWIGHT.



# QUESTIONS TO BE ANSWERED BY THE AGENT.

1. Name, Residence and occupation of the person whose life is proposed to be insured ?	Walton Dwight, Windsor, Broome Co., N. Y., Real Estate and Grain Dealer.		
2. A. Are you sure that he is the party examined by the Medical Examiner ?	A. Yes.		
B. Are you personally acquainted with him ? How long ?	B. Yes ; about five years.		
3. His usual personal occupation during the last ten years ?	Real Estate and Grain Dealer since I have known him.		
4. Is his character thoroughly honorable ?	Yes.		
5. Is he sober and temperate and has he always been so ?	Yes.		
6. State his A. Height ? (American Measure.)	A. Six feet three inches.		
B. Weight ?	B. 225 lbs.		
C. Apparent age ?	C. Looks about 40 years.		
7. Does he look older or younger than he is ?	Younger, if either.		
8. Is his complexion clear, fresh colored, pale, florid or brown ?	Clear and fresh.		
9. His general appearance ?	Robust.		
10. Does he look at all bloated ?	No.		
11. A. Have you ever heard of his being seriously ill ? If so, when and with what diseases ?	A. No.		
B. Is he afflicted with any bodily defect ?	B. Not to my knowledge.		
C. Is he to the best of your knowledge now perfectly healthy ?	C. Yes.		
12. Have any of his near relations died of consumption, asthma or other pulmonary diseases ?	No ; not to my knowledge, except Mother.		
13. Does he live in easy circumstances ?	Yes.		
14. How high do you estimate his annual income ?	From five to ten thousand dollars.		
15. Further particulars ?	None.		
16. How would you rate the proposed life's health ?	A A 1.		
" " " " physical constitution ?	A A 1.		
" " " " occupation and manner of living ?	A A 1.		
" " " " temperance and habits ?	A A 1.		
How would you rate the proposed life in toto ?	A A 1.		

N. B. 1. Before answering these questions inform yourself of the duration of life which the Expectation Table at the foot of this assumes.  
 2. Answer each of the above questions under No. 16 merely by either A A 1, or A 1, or 1, or 2, or 3.

Dated at *Binghamton, N. Y.*, this 22 day of *August*, 1878.

*H. C. HERMANS, Agent.*

Approved.....187

General Agent.

Table of Expectation of Life.						
1	2	3	1	2	3	
Present Age.	Years of expectation of further life.	Age at which death is expected.	Present Age.	Years of expectation of further life.	Age at which death is expected.	
20	39.88	59.88	33	31.14	64.14	69.00
21	39.19	60.19	34	30.49	64.49	69.34
22	38.51	60.51	35	29.83	64.83	69.68
23	37.83	60.83	36	29.17	65.17	70.02
24	37.15	61.15	37	28.52	65.52	70.36
25	36.47	61.47	38	27.87	65.87	70.70
26	35.80	61.80	39	27.21	66.21	71.03
27	35.13	62.13	40	26.56	66.56	71.36
28	34.46	62.46	41	25.91	66.91	71.68
29	33.79	62.79	42	25.26	67.26	72.03
30	33.13	63.13	43	24.61	67.61	72.40
31	32.47	63.47	44	23.96	67.96	72.78
32	31.80	63.80	45	23.30	68.30	73.18
			46	22.65	68.65	73.59

**Exhibit 22.**

[Read at page 173.]

Application to the Mutual Benefit Life Insurance Company of New Jersey for insurance on the life of Walton Dwight.

Dated August 1st, 1878.

Amount, \$15,000.

2365

Term, life.

Benefit of Frank Dwight, son of Walton Dwight.

Premium, \$ payable semi-annually.

In answer to the question: "Q. Has the party since childhood had disease of the heart or brain, rupture, dropsy, liver complaint, &c., including bronchitis, spitting of blood, habitual cough and consumption?" The answer is: "A. I have had dyspepsia or stomach trouble and slight touches of rheumatism caused by exposure; but entirely free from same at present so far as known."

"Q. Name and residence of party's usual medical attendant or medical attendant of the family, to be referred to for information as to his health? A. Dr. J. G. Orton, Binghamton, N. Y."

2366

On the second page is a declaration to be made and signed by the person proposing to make an insurance on the life of another, such declaration being signed "Frank Dwight, by his father, Walton Dwight."

(NOTE.—It was admitted that the policy which was granted on this application was for only \$10,000, and not for \$15,000.)

2367

**Exhibit 23.**

[Read at page 173.]

Application to the Northwestern Mutual Life Insurance Company on the life of Walton Dwight.

Dated August 18th, 1878.

Amount applied for, \$10,000.

Life policy.

Benefit of Walton Dwight, self or estate.

Premium, \$      payable quarterly, and yearly after the first year.

Insurance to be included in nine policies.

Occupation stated to be "General operator in  
2368 real estate and grain."

"Q. What occupation has the person been previously engaged in? A. Real estate." With index finger "In giving the occupation of the person it is not sufficient to state for example that he is a merchant or mechanic, but the particular branch of business or the trade must be specified."

In answer to the question No. 11, as to whether "you have ever had any of the following diseases or any symptoms thereof,"—which included spitting of blood, bronchitis, rheumatism and consumption, the answer is "in changing from here  
2369 to Chicago last spring, I was generally out of sorts; had rheumatism or was lame for some three weeks; nothing serious; my stomach troubled me at the same time; was prescribed for two or three times by Dr. Allan Brooks, and was then in some three weeks; nothing chronic that I know of, and only temporary.

"Q. Have you had an habitual cough? A. No.

"Q. Are you now subjected to or affected by disease or weakness, or have you had any severe disease or received any serious injury other than those stated in the previous answer; if so, state  
2370 the particulars fully, prefixed by the words 'none except'? A. No."

"Q. Is your life now assured, and if so for how much and in what company? A. Am insured for \$10,000 in the Equitable, paid up policies for some \$5,000 more in other companies. Don't reinember names."

(Signed) "WALTON DWIGHT."

**Exhibit 24.**

[Read at page 173.]

Application to the Washington Life Insurance Company for insurance on the life of Walton Dwight.

2371

Dated August 15th, 1878.

Amount applied for \$10,000, as follows: one \$5,000 policy, one \$2,000 policy, and six policies of \$500 each.

Term, life.

Benefit of Walton Dwight.

Premiums, \$ , payable quarterly first year.

Contains the question "Q. Has the party ever had any of the following diseases; if so, state particulars of their character and duration?" In the list which follows are included spitting blood, bronchitis and consumption. The answer is: "Last spring in changing from here to Chicago, I was generally ill for three weeks; had some rheumatism and trouble with stomach; Dr. Allan Brooks of Chicago prescribed for me three or four times, when I entirely recovered and have been well ever since. Some ten years ago had a slight touch of dyspepsia; otherwise "No," to all questions under head of 11. 2372

"Q. Has the party had any serious illness, local disease or personal injury, and if so, of what nature? A. No.

(Signed) WALTON DWIGHT."

2373

**Exhibit 25.**

[Read at page 173.]

Application to the Berkshire Life Insurance Company of Berkshire, Massachusetts, for insurance on the life of Walton Dwight.



Dated, August 20th, 1878.

Amount applied for \$10,000.

Kind of policy, ordinary life.

Benefit of

Premium \$86.70 payable quarterly.

- 2374 The occupation of the applicant is stated to be "Real estate and grain dealer," and in the place in which occupation is to be stated appears this printed direction: "In giving your occupation it is not sufficient to state for example that you are a merchant, or mechanic, or clerk, but the particular branch of business or trade must be specified."

Under the designation "5 c." is the question "Q. Are you and have you ever been engaged in the manufacture or sale of ale or beer, wine, or any other intoxicating liquor?" The answer is "No, except kept a hotel about three years, where liquor was sold by the package; no bar."

- 2375 In answer to question "8 Q. Have you ever had any of the following diseases, answer yes or no opposite each,"—the list including consumption, pleurisy, asthma, bronchitis, spitting of blood, habitual cough,"—the word "No" appears opposite each one of the diseases mentioned.

- In the margin of the application opposite the last question under a direction to state particularly the character and duration of all the diseases the applicant has had, he answers: "I have never had any sickness, except last spring, I went to Chicago and while becoming acclimated I was ill for about three weeks; stomach troubled me; was also lame; supposed to be muscular rheumatism; I was prescribed for three or four times by Dr. Allan Brooks, when I entirely recovered and have been well ever since."
- 2376

"Name and residence of your usual medical attendant? J. G. Orton, Binghamton, has known him twenty to twenty-five years.

(Signed) WALTON DWIGHT."

**Exhibit 26.**

[Read at page 173.]

Application to the Home Life Insurance Company  
for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for, \$0,000.

2377

Ordinary life policy.

Benefit of heirs and assigns.

Premium \$ payable quarterly "with  
profits."

"Q. What employment has the party been engaged in? A. Real estate mostly.

Q. Has the party been employed or engaged in the manufacture or sale of intoxicating liquors; if so, in what way, and when? A. No, except owned hotel about three years; liquors sold by package; no bar.

Q. What amount is now insured on the life of the party, and in what company or companies? A. Equitable, \$10,000; Washington, \$10,000; Connecticut Mutual, \$15,000; New-York Mutual Life, \$10,000.

2378

Q. 17. Has the party ever had an habitual cough; has he had spitting of blood? A. No.

(Signed) WALTON DWIGHT."

Attached to this application was a postal card, also read in evidence, reading as follows: "Binghamton, August 22 1878."

In application sent you this P. M. of Mr. Walton Dwight he stated by mistake that he had a policy in the New-York Life; he meant the Mutual Life. Very truly, H. C. Hermans.

2379

(NOTE.—Policy for only \$5,000 was issued on this application).

**Exhibit 27.**

[Read at page 173.]

Application to the Manhattan Life Insurance Company of New-York for insurance on the life of Walton Dwight.

2380 Dated August 20th, 1878.  
Amount applied for \$10,000.  
Term, life.

Premium \$ payable quarterly.

“Q. Occupation at present time? A. Real estate and grain dealer. State employment he has been engaged in; what has been the effect of this employment upon health; if he is a merchant or manufacturer, say in what business; has he been engaged in any way in the retailing of alcoholic drinks?” Answers “Real estate and grain, dealer always; no bad effect on health.” The answer “No” is made to the question on the subject of retailing alcoholic liquors.

2381

“Q. If now insured, state in what company or companies, and amount in each? A. Equitable \$10,000; Washington \$10,000; Connecticut Mutual \$15,000; New-York Mutual \$10,000,—or rather Mutual Life.

Q. Has he an habitual cough or any disease, or is any disease suspected? A. No.

2382 Q. Has he had since childhood the diseases specified, among which is spitting of blood? The answer is “Last spring on changing from here to Chicago, I was generally out of sorts had rheumatism and trouble with my stomach; was sick some three weeks, being prescribed for by Dr. Allan Brooks of Chicago, some three or four times, when I was fully recovered and have been well ever since; in 1869 I had something like dyspepsia, but nothing serious, and have had no trouble since.” To all the questions referred to the answer is “No except as above.”

“Q. 24.” Calls for the name of any physician who

has been consulted or advised with at any time ; if more than one, the address of each. The answer is " Dr. George Burr, Binghamton, N. Y.

Q. 23. Name and residence of his usual physician or medical attendant to be referred to as to state of his health ? A. Dr. J. G. Orton, Binghamton N. Y.

2383

(Signed) WALTON DWIGHT."

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**Exhibit 28.**

[Read at page 173.]

Application to the Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts, for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for \$10,000.

2384

Ordinary life policy.

Benefit of Frank Dwight.

Premium \$ payable quarterly : "no loan."

"Q. 8. Has the said party had any of the following complaints," list of which follows "a separate answer required to each."

In the list of diseases are included asthma, rheumatism, bronchitis, pneumonia, pleurisy, habitual cough, spitting or raising of blood.

As to each of these diseases the answer is "No."

In the margin is this statement : "Last spring I went to Chicago and while becoming acclimated I was ill for about three weeks ; stomach troubled me ; was also lame ; supposed to be muscular rheumatism ; I was prescribed for three or four times by Dr. Allan Brooks, when I entirely recovered, and have been well ever since."

2385

Q. 3. Profession or occupation at present ? A. Real estate and grain dealer.

Q. Formerly ? A. Same, speculator, army, hotel keeper.

Q. 26. Give name and residence of said party's usual medical attendant? A. Dr. J. G. Orton, Binghamton, N. Y.

Q. Last medical attendant? A. Have never had any serious sickness, except as stated in margin.

(Signed) WALTON DWIGHT."

2386

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**Exhibit 29.**

[Read at page 173.]

Application to the National Life Insurance Company, Vermont, for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for \$10,000.

Ordinary life plan.

2387 Benefit of child, Frank Dwight.

Premium \$ payable quarterly.

"Q. 13. Has the party been afflicted since childhood" with certain diseases in list of which are included "consumption, spitting of blood, &c.," with an interrogation as to each.

The answer to these questions is "No."

(Signed) WALTON DWIGHT.

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**Exhibit 30.**

[Read at page 173.]

2388

Application to the New England Mutual Life Insurance Company of Boston for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for \$10,000.

Policy on the life plan.

Benefit of self.

Premium \$ payable quarterly.



“ By this application the applicant proposes to become a member of the company, and with that view and as the basis of such insurance makes the following statements declared to be warranties, and in all respects true.

“ Q. Profession or occupation? A. Real estate and grain dealer.” To the question whether now or at any time, when, how long and under what circumstances, and to what degree he has been subject to or at all affected by the following symptoms, diseases or infirmities, or suspected to be so by himself or by any medical authority—the list following includes consumption, spitting of blood or any disease of the lungs—the applicant answers “ I have never had any serious sickness except last spring I went to Chicago, and while becoming acclimated I was ill for about three weeks : stomach troubled me ; was lame ; supposed to be muscular rheumatism ; I was prescribed for three or four times by Dr. Allan Brooks, when I entirely recovered ; have been well ever since.”

“ Has the person now, or has he had any serious illness, disease, or symptom of disease, not enumerated above, or met with any accident or injury, and if so, of what nature and when? A. None, except slight wound in army ; perfectly recovered.

Q. Name of usual medical attendant? A. J. G. Orton, Binghamton, N. Y.”

(Signed) WALTON DWIGHT.

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**Exhibit 31.**

[Read at page 173.]

Application to the New York Life Insurance Company for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for \$20,000, in two policies.

2389

2390

2391

Term life.

One policy of \$10,000 for the benefit of Walton Dwight, and the other of \$10,000 for Frank Dwight, only child.

The occupation or employment is stated to be "Real estate and grain dealer."

**2392** In answer to question "Is the person now or has he ever been engaged in any way in the retailing of alcoholic liquors?" the answer is "No, except kept a hotel about three years where liquor was sold by package; kept no bar." In answer to Q. 11, "Has the party had or been afflicted since childhood with any of the following complaints, separate answer required to each query"—the list following included among the diseases, disease of the lungs or pulmonary complaint, spitting or raising of blood and bronchitis: he answers "No" to each query.

**2393** In answer to Q. 27, calling for the name and residence of his usual medical attendant, he answers, "Dr. J. G. Orton, Binghamton, N. Y."

At the foot of this application is the following:

**2394** "I do hereby agree that the statements and representations contained in the foregoing application and declaration, shall be the basis of the contract between me and the said Company, the truthfulness of which statements and representations whether written by my own hand or not, I do hereby warrant that if some or any of them are in any respect untrue, the policy which may be issued hereon shall be void, and all moneys which may have been paid on account of such insurance shall be forfeited to said Company. And inasmuch as only the officers of the Home Office of said Company in the City of New York have authority to determine whether or not a policy shall issue on any application and as they act on the written statements or representations referred to, it is expressly understood and agreed that no statement, representation or information made or given by or

to the person soliciting or taking this application for a policy or to any other person shall be binding on the Company or in any manner affect its rights unless said statement, representation or information, be reduced to writing and presented to the officers of the Company at the home office in the above application.

2395

(Signed) WALTON DWIGHT."

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**Exhibit 32.**

[Read at page 173.]

Application to the same Company for insurance on the same life, same date, and for the same amount—as in case of preceding application.

Life policy.

Amount applied for \$20,000 in two policies, one for benefit of applicant, Walton Dwight, and one of same amount for Frank Dwight, only child of Walton Dwight.

2396

Premium, \$ , payable quarterly.

In answer to Q. 3, Dwight's occupation or employment is stated to be "Real estate and grain dealer."

In answer to 7 c., "Is the person now or has he ever been engaged in any way in the retailing of alcoholic spirits," he says, "No, except kept hotel about three years where liquors were sold by package. Kept no bar."

In answer to Q. 11, "Has the party had or been afflicted since childhood with any of the following complaints: separate answers required to each query,"—the list following, including diseases of the lungs or pulmonary complaints, spitting or raising of blood and bronchitis,—as to each of said diseases he answers "No."

2397

In answer to Q. 27, calling for the name and

residence of the person's usual medical attendant, he states "Dr. J. G. Orton, Binghamton, N. Y."

"Q. 22. Has the party any other insurance on his life; if so, where and for what amount? A. In the attached application.

2398 [NOTE.—There was nothing attached to this application, but the reference was understood to be intended to apply to the application, Exhibit 31.]

(Signed) FRANK DWIGHT,  
by his father, Walton Dwight.  
WALTON DWIGHT.

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**Exhibit 33.**

[Read at page 173.]

2399 Application to the Life Department of the Travellers' Insurance Company for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for, \$10,000.

Term, life.

Benefit of applicant's legal representatives.

Premium, \$ , payable quarterly.

2400 In answer to Q. 4, to be asked by medical examiner, "Has the person proposed ever had any of the following diseases or symptoms; if he has had any of the diseases here named, state full particulars, answer yes or no opposite each;—the list following including consumption, bronchitis, spitting of blood, habitual cough,—he answers, "No," as to each of the diseases. The following statement is made: "Last spring, while getting acclimated in Chicago, was sick with muscular rheumatism and trouble with the stomach. Was sick about three weeks. Dr. Allan Brooks prescribed three or four times, and applicant recovered fully, and has been well ever since."

In answer to Q. 11, calling for name and residence of usual medical attendant, he states "J. G. Orton, Binghamton, N. Y." In answer to Q. 15, Has he reviewed the answers to the above questions, and is he sure that they are correct, he answers "Yes."

"It is hereby declared and warranted that all 2401 and several the answers made to the interrogatories to this application are full, complete and only answers made by the person whose life is proposed for insurance, or by the person for whose benefit the insurance is proposed ; that they are correctly recorded and are strictly true ; and it is acknowledged and agreed by the person that this application shall form the basis and become part of the insurance contract hereby applied for including all its provisions and additions, and if there be in any one of the answers herein made any incorrect statement either made by misrepresentation, evasion concealment or otherwise, then any policy granted 2402 upon this application shall be null and void, and all payments on account thereon shall be forfeited to the Company."

(Signed) WALTON DWIGHT.

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**Exhibit 34.**

[Read at page 174.]

Application to the Union Mutual Life Insurance Company of Maine, for insurance on the life of Walton Dwight. 2403

Dated August 20th, 1878.

Amount applied for \$10,000.

Kind of policy, ordinary life.

Benefit of Walton Dwight.

Premium \$ payable quarterly.

The applicant's business is stated to be "Real estate and grain dealer."



“ Q. Place of business? A. No local place of business. Q. Former occupation? A. Same as now. Q. 7. Are you engaged in the manufacture or sale of intoxicating drinks; if you have been so engaged, state full particulars?” The applicant answers “No” to each of these questions, and adds  
 2404 this statement “except kept a hotel about three years, where liquor was sold by the package. No bar.”

In answer to Q. 5 “Have you ever been subject to or had any of the following disorders or diseases, answer yes or no to each,”—the list following including consumption, catarrh, habitual cough, pleurisy, pneumonia, or inflammation of the lungs, spitting or raising of blood,—the applicant answers “No” to each.

Added to the answers last referred to, the applicant makes this statement: “I have never had any  
 2405 serious sickness except last spring I went to Chicago and while becoming acclimated, I was ill for about three weeks; stomach troubled me; I was lame; supposed muscular rheumatism; I was prescribed for three or four times by Dr. Allan Brooks, when I entirely recovered, and have been well ever since.”

“I hereby declare that I have read the above questions and written answers, and that the answers as written are correct and true; and I hereby for myself and for all others who may in any event have or claim any interest in the insurance hereby applied for, do request and authorize any physician or surgeon having any knowledge or information  
 2406 acquired professionally or otherwise touching the matters herein referred to mentioned or involved, to disclose the same fully at any time at the instance of said Company, hereby waiving any privilege connected therewith. It is hereby declared and agreed that all the statements and answers to the printed questions, written upon forms A and B, which, together with this declaration and agreement, constitute an application to

the Union Mutual Life Insurance Company of Maine for an insurance of \$10,000 upon the life of Walton Dwight, are offered to the said company as a consideration of the contract applied for, each of which statements and answers, whether written by his own hand, or any other person whose name is hereto subscribed, adopts as his own, and admits to be material, warrants to be full, complete and true, and to be the only statements given to the company in reply to these inquiries, and upon which, should the insurance applied for be granted, the company's contract will be founded; and this application is submitted to the said company, with the following express covenants and agreements: 2407

1. That it will constitute no contract of insurance until a policy shall have first been issued and delivered by said company, and the first premium thereon actually paid during the continuance of the life proposed for insurance in the same condition of health described in the application. 2408

2. That, if the insurance applied for be granted by the company, the policy, if accepted, will be accepted subject to the conditions and stipulations contained in the policy, and that in particular on insurance shall be claimed to be hereby granted against death by self destruction; nor shall any insurance be hereby granted if health shall be impaired by the use of narcotics or alcoholic stimulants."

(Signed) WALTON DWIGHT.

2409

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**Exhibit 35.**

[Read at page 174 ]

Application to the United States Life Insurance Company in the City of New York for insurance on the life of Walton Dwight.

Dated August 20th, 1878.

Amount applied for, \$10,000.

Kind of policy desired, life.

Premium \$ , to be paid quarterly.

Benefit of Walton Dwight.

Occupation and employment is stated to be "Real estate and grain dealer."

- 2410 In answer to question A, "Are you engaged in the manufacture and sale of intoxicating drinks? B: Have you been so engaged? C. State full particulars? he answers, to A. "No;" to B. "No, except kept a hotel about three years, where liquor was sold by package. No bar."

- 2411 "Q. 5. Have you ever been subject to, or had any of the following disorders or diseases? Answer yes or no to each"—the list including spitting or coughing of blood, articular rheumatism, pneumonia, or inflammation of the lungs, habitual cough, consumption, catarrh and bronchitis and asthma,—he answers, "No" to each. Opposite this series of answers is a star, with a memorandum, "See note"; and a corresponding star appears at the margin below with this note: "I have never had any serious sickness except last spring I went to Chicago, and while becoming acclimated was ill about three weeks. Stomach troubled me; was lame; supposed to be muscular rheumatism. I was prescribed for three or four times by Dr. Allan Brooks, when I entirely recovered, and have been well ever since."

- 2412 "Q. 11 is divided into three sub-divisions: "How long since you were attended by any physician, or have professionally consulted one? A. Last spring. Q. For what disease? A. Slight bilious attack. Q. Give the name and residence of that physician and that of your usual medical adviser? A. Dr. Allan Brooks, Chicago, and secondly Dr. J. G. Orton, Binghamton, N. Y."

"I hereby declare that I have read the above questions and written answers and that the answers as written are correct and true, and I hereby for

myself and for all others who may in any event have or claim any interest in the insurance hereby applied for, do request and authorize any physician or surgeon having any knowledge or information acquired professionally or otherwise touching matters herein referred to, mentioned or involved to disclose the same fully at any time at the instance of said Company, and hereby waive any privilege whatsoever and howsoever connected therewith.

2413

“It is hereby declared and agreed that all the statements and answers to the printed questions written upon the foregoing forms A. and B. which together with this declaration and agreement constitute an application to the United States Life Insurance Company in the City of New-York for an insurance in the amount above mentioned upon the life of the person proposed for insurance above named, are offered to said Company as a consideration of the contract or policy of insurance applied for, each of which statements and answers whether written by his own hand or any other person whose name is thereto subscribed or who in any event may have any interest in the policy in question, adopts as his own and admits to be material and warrants to be full, complete and true as facts and to be the only statements given to the Company in reply to these inquiries and upon the good faith of which as facts, should the insurance applied for be granted, the Company’s contract will be founded.”

2414

(Signed) WALTON DWIGHT.

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 2415

**Exhibit 36.**

[Read at page 174.]

Application to the Aetna Life Insurance Company, of Connecticut, for insurance on the life of Walton Dwight.

Dated August 21, 1878.

Amount applied for \$10,000.

Term--Life.

2416 "I, Walton Dwight, of Windsor, County of Broome, State of New York, being desirous of affecting an insurance with the Aetna Life Insurance Company in the sum of \$10,000 upon my life, during the whole term of life participate, do hereby declare and warrant that my age next birthday will be 41 years ; that I am now in good health, of sound body and mind and do usually enjoy good health ; that the following answers and statements are correct and true, in which I have not concealed, withheld, or misrepresented any material circumstance relating to the past or present state of my health, habits of life or conditions which may render an insurance on my life more than usually hazardous, or with which the Directors of said Company ought to be made acquainted ; and I do hereby agree and warrant that the answers given to the following questions and the accompanying statement with this declaration shall be the basis and form part of the contract or policy between me and the Company and if the same be in any respect false or fraudulent that the policy shall be void, and all premiums which may have been paid on account thereof shall be forfeited to said Company."

2417

The policy to be for the benefit of Frank Dwight, of Windsor, son and only child.

The business of the life proposed for assurance is stated to be "Real estate and grain dealer."

2418 "Q. 12. Has the party ever had any of the following diseases: answer yes or no opposite each," —the list including asthma, bronchitis, consumption, spitting of blood. To each of these questions the answer is "No."

"Q. 16. Whether the party has had during the last seven years any disease or severe sickness ; if so, state the particulars of each case and the name of attendant physician. See margin."

In the margin is written, "When in Chicago last



spring and while becoming acclimated, was ill about three weeks ; stomach troubled me and had slight muscular rheumatism ; Doctor Allan Brooks prescribed for me when I entirely recovered and have been well ever since."

In answer to "Q. 23," Dr. J.G.Orton, of Binghamton, N. Y., is stated to be the family physician of 2419  
Dwight, or the one whom he has usually employed or consulted.

(Signed)                      WALTON DWIGHT.

**Exhibit 37.**

[Read at page 174.]

Application to the National Life Insurance Company of the United States of America, Washington, D. C., for insurance on the life of Walton Dwight. 2420

Dated August 22, 1878.

Amount applied for \$10,000.

Kind of policy, ordinary life.

Benefit of heirs and assigns.

Premium \$                      to be paid during life, quarterly.

The occupation of the applicant is stated to be  
" Real estate and grain dealer."

" Q. 5. Have you now or have you ever had any of the following diseases ; answer yes or no opposite each,"—the list of diseases includes diseases of the lungs, bronchitis, asthma, pleurisy, pneumonia, blood-spitting—" State the particulars, 2421  
character, and duration of any of the foregoing diseases if you have had any, whether there was a perfect recovery. To each of these questions the applicant answers "No." And under the general question as to the particulars, character, and duration of any of these diseases, he answers, " Last spring in changing from here to Chicago I was gen-

erally out of sorts ; had rheumatism and troubled with my stomach ; was sick some three weeks. Was prescribed for by Dr. Allan Brooks some three or four times when I fully recovered and have been well since. In 1869 I had something like dyspepsia, nothing serious, no trouble." To all these questions embraced in Q. 5, the applicant answers "No, except as above."

2422

"Q. 7. Have you ever had an habitual cough ?  
A. No.

Q. 21. Has the applicant reviewed the answers to the above questions and is he sure they are correct ?  
A. Yes, sir.

It is hereby declared and warranted that all and every of the answers above made are true and that all the conditions of this application shall be part of a consideration precedent if the insurance policy and contract applied for shall be issued ; and if there be anything in this application incorrect or untrue, then any policy granted upon it shall be null and void, the taking or receipt of premium by the company, or notice to the contrary notwithstanding."

2423

(Signed) WALTON DWIGHT.

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**Exhibit 3S.**

[Read at page 174.]

2424 Application to the Brooklyn Life Insurance Company, for insurance on the life of Walton Dwight.  
Dated August 30, 1878.  
Amount applied for, \$10,000.  
Kind of policy, ordinary life.  
Benefit of heirs and assigns.  
Premium, \$43, payable quarterly.  
The occupation of the applicant is stated to be real estate and grain dealer.

Q. 6. "Is there now any insurance on your life?  
 A. Yes, sir; M. Benefit, \$10,000; Home, \$5,000;  
 Northwestern, \$10,000." "If so, state the company  
 and amount." The answer is continued: "Con-  
 necticut Mutual, \$15,000; New-York Mutual Life  
 Company, \$10,000; New-York Life, \$10,000; Ger-  
 mania, \$15,000.

2425

"It is hereby declared that the above answers to  
 the foregoing questions—also to those made to the  
 medical examiner—are warranted to be true; and it  
 is acknowledged and agreed by the undersigned  
 that the said statements shall be a part of the con-  
 tract for insurance, and also that any untrue or  
 fraudulent answer, any suppression of facts in  
 regard to the person's health or habits in answering  
 the foregoing questions, or neglect to pay the pre-  
 mium on or before the day it becomes due, will  
 render the policy null and void and forfeit all  
 payment made thereon, except as provided in the  
 policy."

2426

(Signed) WALTON DWIGHT.

On the next page, "Statement to medical exam-  
 iners," the question appears: "Q. 3. Have you ever  
 been predisposed to or had any of the following  
 diseases or infirmities? A. No. Q. Have you  
 either now? A. No." Following is a list, an  
 answer being put to each particular disease referred  
 to. The list includes asthma, bronchitis, habitual  
 cough, consumption, pneumonia, inflammation of  
 the lungs, pleurisy, spitting or raising of blood, or  
 other hemorrhage." To each one of these questions  
 the applicant answers "No."

2427

"Name and residence of your medical attendant?  
 A. Dr. J. G. Orton, Binghamton, N. Y.

I hereby further declare that I have read and  
 understand all the above questions put to me by  
 the medical examiner, and the answers thereto, and

that the said are warranted by me to be true, and that I am the same person described as above."

(Signed)      WALTON DWIGHT,  
Person examined.

2428

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**Exhibit 39.**

[Read at page 174.]

Application to the Homeopathic Mutual Life Insurance Company of New-York, for insurance on the life of Walton Dwight.

Dated August 30, 1878.

Amount applied for, \$5,000.

Term of policy ; common life.

Premium, \$52.41, to be paid quarterly.

2429      Benefit of, heirs and assigns.

Date of the commencement of risk, "When approved by the company."

In answer to Q. 6, "Is there now any insurance on your life?" (B. if so, in what company and for what amount) the applicant answers, "Connecticut Mutual, \$15,000 ; Mutual Life, \$10,000 ; New-York Life, \$10,000 ; Germania, \$15,000 ; North Western, \$10,000 ; Manhattan, \$10,000."

Q. 8. "Have you ever had or been predisposed to any of the following diseases ; answer yes or no opposite each?" The list to which the question relates, includes bronchitis, habitual cough, inflammation of the lungs, spitting blood. As to each of these questions on the subject of diseases, the answer is, "No."

2430

"What are the particulars, character and duration of the diseases which you have had? A. Last spring in changing from here to Chicago I was generally out of sorts ; had rheumatism and trouble with my stomach ; was sick some three weeks ; was prescribed for by Dr. Allan Brooks,

of Chicago, some three or four times when I was wholly recovered, and have been well ever since.

"In 1869 I had something like dyspepsia, but nothing serious; no trouble since."

To all the questions embraced under the head Q. 8, the applicant answers "No; only as above."

Q. 21, "What system of medical treatment do you employ when ill? A. Have employed Dr. T. L. Brown in family; no special system personally. 2431

Q. 22. "Has any material fact bearing upon your mental or physical condition or family history been omitted in the foregoing questions? if so, what? A. No."

"It is hereby affirmed, declared and warranted by the undersigned, that the above are fair and true answers to the foregoing questions, and it is stipulated and agreed by the undersigned that the above statements shall form the basis for the contract for insurance, and also that any untrue or fraudulent answers—any suppression of facts in regard to the person's health, or neglect to pay premium on the day it becomes due—will render the policy null and void, and forfeit the payments made thereon, except as provided in the policy. 2432

(Signed) WALTON DWIGHT.

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**Exhibit 40.**

[Read at page 174.]

Application to the State Mutual Life Insurance Company of Worcester, Mass., for insurance on the life of Walton Dwight. 2433,

Dated September 2d, 1878.

Amount applied for \$10,000.

Benefit of self.

Premium payable quarterly.

Q. 12. "Specification D. Are you now, or have



you ever been, engaged in the manufacture or sale of beer, wine, or any other intoxicating liquor?

A. No; except kept a hotel where liquor was sold by the package; no bar.

Q. 13. Have you had any of the following diseases: answer yes or no to each one?" The list  
2434 includes bronchitis, pleurisy, inflammation of the lungs, consumption, spitting blood, habitual cough—as to each of these the applicant answers "No."

To the list of diseases is added, "If you have, state particularly the character and duration of such diseases."

In answer to this inquiry the applicant says, "I never had any serious sickness, except when in Chicago last spring while becoming acclimated I was ill for about three weeks; stomach troubled me; was lame, supposed to be muscular rheumatism. Dr. Allan Brooks prescribed for me three or four  
2435 times when I entirely recovered and have been perfectly well ever since."

Q. 27. "Have you by yourself or by an agent, ever made any proposal or application to any company or to the agent of any company for an insurance upon your life, upon which a policy has not been granted? A. No."

Q. 28. "Have you carefully read the above questions and answers before signing this application? A. Yes."

"And I do hereby agree that this declaration and the answers given to the foregoing questions and to the questions in the medical certificate, and  
2436 the statements made in this application and in said medical certificate, shall be the basis and form part of the contract between me and this company, and that if the same be not in all respects true and correctly stated the policy shall be void."

(Signed) WALTON DWIGHT.

**Exhibit 41.**

[Read at page 174.]

Application to the Manhattan Life Insurance Company of New-York for insurance on the life of Walton Dwight.

Dated September 3d, 1878.

2437

Amount applied for \$5,000.

Term, life.

Benefit of heirs and assigns.

Premium payable quarterly.

Occupation of applicant is stated to be "real estate and grain dealer."

Q. 7. "State the employment he has been engaged in; what has been the effect of these employments upon his health; if he is a merchant or manufacturer, say in what line or business; is he engaged in any way in the retailing of alcoholic liquors?

A. Real estate and grain dealer always; no bad effect on health." As to question on the subject of retailing alcoholic liquors the answer is "No."

2438

Q. 13. "Has he had since childhood"—among a list of diseases, "asthma, consumption, spitting of blood, and if so which? A. Last spring in changing from here to Chicago I was generally out of sorts; had rheumatism and trouble with my stomach; was sick some three weeks; was prescribed for by Dr. Allan Brooks of Chicago some three or four times when was wholly recovered and have been well since. In 1869 had something like dyspepsia but nothing serious; no trouble since." To all the questions on the subject of diseases the answer is "no, except as above."

2439

Q. 18. "Has he an habitual cough or any disease or is any disease suspected? A. No."

Q. 27. "If now insured state in what company or companies and the amount in each? A. Connecticut Mutual \$15,000; New-York Life \$10,000; Equitable \$10,000; Washington \$10,000; Manhattan \$10,000."

Q. 28. "Has application for insurance on his life ever been declined or postponed, or has he ever been advised not to apply for insurance in any other company, by any officer, examiner, agent or solicitor for such company? If yes, with what company? A. No."

2440 At the top of the sheet is the following: "The applicant will state definitely, for the information of the directors, in order that they may determine understandingly upon the application, any circumstances or fact in relation to the present or past state of health of the said Walton Dwight and which circumstance is not included in the foregoing statements." In answer to which is the following: "No statement except as above."

(Signed) WALTON DWIGHT.

Following, which is the further agreement signed by Walton Dwight, in which appears the following:

2441 "I, Walton Dwight, do hereby declare and warrant that his age next birthday will be forty-one; that he is now in good health and has usually enjoyed good health: that he is not addicted to, habits of intemperance, or other habits tending to shorten life, and that the preceding answers and annexed statements are correct and true, in which is not concealed, withheld or unmentioned any circumstance in relation to the past or present state of his health, habits of life or condition which may render an insurance upon his life more than usually hazardous, and with which the directors of said

2442 company ought to be made acquainted \* \* \* and I hereby further agree that the preceding answers given to the annexed questions and the accompanying statements, and this declaration shall be the basis and form part of the contract or policy between me and the said company, and if the same be not in all respects true and correctly stated, the said policy shall be void; and all moneys which

may have been paid on account thereof shall be forfeited to the company."

(Signed) WALTON DWIGHT.

**Exhibit 42.**

2443

[Read at page 174.]

Application to the Metropolitan Life Insurance Company for insurance on the life of Walton Dwight.

Dated September 4, 1878.

Amount applied for \$10,000.

Term, life.

Benefit of, heirs and assigns.

Premium payable, quarterly.

The occupation of the applicant is stated to be real estate and grain dealer.

Q. (*By Medical Examiner*) 7. Has the said 2444  
life now or has he ever had any of the following  
diseases? Separate answers required to each  
query." The list referred to includes consump-  
tion, spitting blood, dyspepsia and rheumatism.

As to consumption the answer is "No"; to spit-  
ting blood, "No"; to dyspepsia, "Yes"; to  
rheumatism, "Yes." And in answer to the direc-  
tion, if he has had one or more of the above dis-  
eases, to state full particulars, he answers, "Slight  
dyspepsia in 1869; fully recovered."

At the foot of the questions is the following: "I  
hereby declare that I have given true answers to 2445  
all questions put to me by the medical examiner;  
that they agree exactly with the foregoing, and  
that I am the same person described in the accom-  
panying application, and whose signature is ap-  
pended to the declaration and warranty herewith."

On the application proper, in answer to Q. 8,  
"In case any other than the person proposed has  
filled in this application, has the said person read

over the answers? Does he fully adopt them as his own? And does he understand the plan of insurance he has selected? A. Yes."

2446 The following is the declaration: "It is hereby declared and warranted that all the answers to the foregoing questions, and to those in the Examiner's report herein, are fair and true, without omission, concealment or mental reservation, and it is acknowledged and agreed by the undersigned, that they may and shall form the basis of the contract of insurance; and, also, that any untrue or fraudulent answer, any suppression of facts in regard to the health or in regard to any pecuniary interest which the insurer may have in the life of the person proposed, any violation of the covenants, conditions or restrictions in the policy—if one be issued—any neglect to pay the premium on or before the day it becomes due will render the policy null and void.

(Signed) WALTON DWIGHT."

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**Exhibit 43.**

[Read at page 174.]

Application to the Knickerbocker Life Insurance Company of New-York, for insurance on the life of Walton Dwight.

Dated September 6th, 1878.

2448 Amount applied for, \$5,000.

Kind of policy, ordinary life, mutual plan with profits.

Benefit of heirs and assigns.

Premium payable quarterly.

Occupation is stated to be real estate and grain dealer always.

"Q. Former occupation or employment, if changed during the last ten years? A. No change."



Following this is a memorandum with a hand pointing to it, as follows: "In giving the occupation or employment, the particular branch of business or the actual trade must be stated; a general statement, mechanic or merchant, will not be sufficient."

"Q. 6. Are you insured in any other company? 2449

A. Yes.

Q. If so give name of each company and amount in each? A. Mutual Benefit, \$10,000; New-York Life, \$10,000; Northwestern, \$15,000; Washington, \$10,000; Germania, \$15,000; Manhattan, \$15,000; Globe, \$15,000; Home, \$5,000; Etna, \$10,000; National U. S., \$5,000; Brooklyn, \$5,000; United States Life, \$10,000; Union Mutual, \$10,000; Equitable, \$50,000."

"Q. 8. Are you engaged in the manufacture or sale of intoxicating liquors? A. No.

"Q. Have you ever been so engaged? State full particulars. A. No." 2450

Questions to be answered by the Medical Examiner.

"Q. 2. Has any application for insurance upon your life ever been made to any company upon which a policy has not been granted? Has any unfavorable opinion upon the insurableness of your life ever been given by a physician? In either case state full particulars? A. Yes, sir; by the Phoenix of Hartford, on account of family record. Only company, as far as heard from out of applications for about \$200,000.

"Q. 4. Have you been subject to or had any of the following disorders or diseases"—In the list which follows are asthma, bronchitis, habitual cough, pleurisy, inflammation of the lungs, spitting or coughing blood, consumption, or any trouble referable to the lungs"? To this the applicant answers "No, except last spring in changing from here to Chicago I was generally out of sorts; had rheumatism and trouble with my stomach; 2451

was sick some three weeks ; was prescribed for by Dr. Allan Brooks some three or four times when I was wholly recovered, and have been well since. In 1869 I had something like dyspepsia ; nothing serious. No trouble since."

2452 "Q. 13. How long is it since you were attended by a physician, or have professionally consulted one, and for what disease? A. See answer to number 4."

"Q. Give the name and residence of that physician, and that of your usual medical adviser? A. Dr. J. G. Orton, Binghamton, N. Y."

2453 At the foot of the examination is the following :  
 "It is hereby declared and agreed that all statements and answers to the printed questions written upon forms A and B, which, together with these declarations and agreements, constitute an application to the Knickerbocker Life Insurance Company of New-York for an insurance of \$5,000 upon the life of Walton Dwight are offered to the said company as a consideration for the contract applied for. Each of which statements and answers, whether written by his own hand or not, every person whose name is hereto subscribed adopts as his own, admits to be material, and warrants to be full, complete and true, and to be the only statements given to the company in reply to its inquiries, and upon which, should any insurance applied for be granted, the company's contract will be founded, and the application is submitted to the said company with the following express  
 2454 covenants and agreements :

That it will constitute no contract of insurance until a policy shall have been issued and delivered by the said company, and the first premium thereon actually paid, during the continuance of the life proposed for insurance in the same condition of health as described in the application."

(Signed) WALTON DWIGHT.

**Exhibit 44.**

[Read at page 174.]

Application to the Provident Savings Life Assurance Company of the City of New-York for the insurance of the life of Walton Dwight.

Dated August 28, 1878.

2455

Amount applied for, \$10,000.

Kind of policy yearly renewal life.

Benefit of self, heirs and assigns.

Premium payable quarterly.

The occupation of the applicant is stated as real estate and grain dealer.

“Q. 5. Has any company ever declined to grant assurance of your life? A. No.

Q. If so, what company, and how long since? A. None.

Q. Has any opinion ever been sought or consultation ever been held with any officer of any life insurance company, or any physician or surgeon, as to whether your life was safely insurable? A. Have now applications pending in New-York Life, New-York Mutual, Connecticut Mutual, Northwestern, \$60,000.

2456

Q. 11. Have you reviewed the answers to the above questions, and are you sure that they are correct? A. Yes.

It is hereby affirmed and declared by Walton Dwight, the applicant above named, and also by the person whose life is proposed for assurance, that the answers to all of the above questions, also those made to the Medical Examiner, are true and correct, and that no intentional omission, concealment or mental reservation has been made of any material fact or circumstance relating to the past and present life, habits or condition, or the family history of the above named Walton Dwight. It is hereby expressly stipulated and agreed that the above application and these declarations shall form the basis of a contract between the

2457

2458 above named persons and the said Provident Savings Life Assurance Company of New-York, and if any misrepresentations, fraudulent or untrue answers have been made, or if any facts which should have been stated to the society shall have been suppressed therein, or if any violation of the covenants, conditions or restrictions of the policy—should one be issued—should occur, or any omission or neglect to pay any of the premiums on or before the days when due take place, that then in either event the said policy shall become and be null and void.”

STATEMENT TO THE MEDICAL EXAMINER.

2459 “ Q. 3. Have you ever had any of the following diseases. Answer yes or no opposite each.” The list includes consumption, pneumonia, pleurisy, bronchitis, spitting blood, habitual cough, asthma—to each of which the answer is “No.”

Opposite these answers the applicant is obliged to state the number of attacks and character and duration of all the diseases which he has had. The answer is “Slight rhenumatism last spring in Chicago, Ill.,—muscular. Entirely well of it since.”

“I hereby further declare that I have read and understand all the questions put to me by the Medical Examiner and the responses thereto, and the same are warranted by me to be true, and that I am the same person described as above.”

(Signed) WALTON DWIGHT.

2460

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**Exhibit 45.**

[Read at page 174.]

Application to the Equitable Life Assurance Society of the United States for the insurance of the life of Walton Dwight.

Dated August 20, 1878.

Amount applied for \$40,000. [Note.—The amount of the policy issued on this application was \$40,000.]

Kind of policy life.

Benefit of self.

Premium payable quarterly.

The occupation of the applicant is stated to be real estate and grain dealer; he is also stated to be 2461 already assured in this company for \$10,000.

“Q. 16. Has the person now or has he ever had any of the following disorders or diseases; if yes, state disease, duration and severity of illness? A. No.”

Among the diseases specified are pleurisy, asthma, inflammation of the lungs, spitting or coughing of blood, consumption—to each of which the answer is “No.”

Opposite these answers is the following memorandum:

“Last spring, while becoming acclimated in Chicago, I was sick for some three weeks; was lame; 2462 had something like muscular rheumatism, and troubled with stomach; was prescribed for three or four times by Dr. Allan Brooks, when I was entirely recovered, and have been well since.

“Q. 26. Name and residence of physicians whom the person has ever consulted, when and for what they were consulted; does the person expressly waive all provisions of law forbidding any person who has attended him from disclosing information which he thereby acquired? A. Dr. J. G. Orton of Binghamton, N. Y., four years ago; Allan Brooks of Chicago, Ill., last spring—and as to the waiver the applicant answers “Yes.” 2463

“This risk as approved and recommended by me. J. G. Orton, Agent.”

(Signed)

WALTON DWIGHT.



**Exhibit 46.**

[Read at page 174.]

Application to the Union Central Life Insurance Company of Cincinnati, Ohio, for insurance for the life of Walton Dwight.

- 2464 Dated September 7, 1878.  
Amount applied for \$5,000.  
Kind of policy ordinary life.  
Benefit of heirs or assigns.  
Premium payable quarterly.

In answer to "Q. 3, occupation? Full particulars regarding the applicant's business or trade must be given. If a mechanic state in detail all the various kinds of work performed; if engaged in more than one occupation specify each in detail"—the answer is "Have always been dealer in real estate and grain."

- 2465 STATEMENT TO THE MEDICAL EXAMINER.

"Q. 6. Have you ever had any of the following diseases or as far as you know any symptoms thereof; answer each question yes or no." The list which follows contains asthma, consumption, bronchitis, spitting blood—to each of which the applicant answers "no."—"Or any other illness, local disease or other infirmity? A. No."

- 2466 "Q. Give full particulars of duration of such?  
A. Last spring in Chicago, I had rheumatism and trouble with my stomach; was generally out of sorts for some three weeks; was prescribed for by Dr. Allan Brooks of Chicago three or four times when I was wholly recovered and have been well since. In 1869 I had something, dyspepsia; nothing serious. Had no trouble since." To all the questions embraced in this question 6, the applicant answers, "no; only as above."

"It is hereby declared and warranted by the undersigned, the applicant above named, and also the person whose life is proposed for assurance, that

the answers to all of the above questions and to the questions asked or to be asked by the medical examiner of the person whose life is proposed for assurance and filled in or caused to be filled in by said examiner as agent of the undersigned for that purpose, are each and all true, full and correct as facts, and inasmuch as the issuing of each policy is decided by the officers of the company at its office in the city of Cincinnati, and as they are to act only upon the printed and written statements and representations herein referred to and mentioned taken together, it is expressly agreed and stipulated that no statement or information made or to be made or given to or to him by the person procuring or transmitting this application or to or to him by any other person, unless such statement or information shall have been reduced to writing and presented to the officers of said company who are to subscribe said policy hereby applied for— if the same shall be issued—shall bind the said company or in any manner affect its rights, if any there may be, not so presented ; and that this application and this declaration and all the written or printed statements herein endorsed, made or subscribed by either of the said undersigned in anywise hereon shall form the basis of and be a part of the contract of insurance hereby applied for.” 2467

“ Q. 17. Do you understand all the written or printed statements upon this application including the statements made to the medical examiner or subscribed by you or that may be made by the person whose life is proposed for insurance and that may be subscribed by you or such person upon this page or on the other side? A. Yes. 2468

“ Q. 18. Do you agree that the same shall be deemed to be true, full and correct as facts upon the face of which as facts said company shall issue the policy hereby applied for—if one is issued—hereon, answer yes or no? A. Yes.”

(Signed) WALTON DWIGHT.

**Exhibit 47.**

[Read at page 174.]

Application to the Manhattan Life Insurance Company of New-York, for insurance of the life of Walton Dwight.

2470 Dated September 9, 1878.

Amount applied for \$5,000.

Term, life.

Benefit of Frank Dwight, only son and child.

Premium payable quarterly.

The occupation of the applicant at the present time is stated to be real estate and grain dealer.

“Q. 7. State the employments he has been engaged in; what has been the effect of these employments upon his health; if he is a merchant or manufacturer, say in what line of business? Is he engaged in any way in retailing alcoholic liquors?

2471 A. Real estate and grain dealer; no bad effect on health.

“Q. 13. Has he had since childhood”—various diseases specified, among which are asthma, consumption, spitting blood, etc.? “A. Last spring in changing from here to Chicago, I was generally out of sorts; had rheumatism and trouble with my stomach; was sick some three weeks; was prescribed for by Dr. Allan Brooks, of Chicago, some three or four times, when I was fully recovered and have been well since. In 1869 I had something like diptheria, but nothing serious; no trouble since.”

2472 And to all the questions embraced under this heading he answers “No; except as above.”

“Q. 23. Name and residence of usual physician or medical attendant to be referred to as to the state of his health? A. Dr. J. G. Orton, Binghamton, N. Y.

“Q. 24. Give the name of any physician who has been consulted or advised with at any time; if more than one, give the address of each? A. Dr. George Burr, Binghamton.

"Q. 32. Have you read the answers to the preceding questions and are you sure they are correct?  
A. Yes.

"Q. 33. Are you aware that any untrue statement or fraudulent allegation or concealment made in effecting the proposed insurance will render the policy void, and that in such case all payments of premium made thereon will be forfeited? A. Yes. 2473

"I, Frank Dwight, one of the persons named in this application and declaration, being desirous of effecting an insurance with the Manhattan Life Insurance Company upon the life of Walton Dwight, do hereby declare and warrant," etc.

(Signed) FRANK DWIGHT,  
Only son and only child by  
his father Walton Dwight.

(Signed) WALTON DWIGHT. 2474

The application is endorsed September 10, 1878.

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**Exhibit 48.**

[Read at page 176.]

"UNITED STATES LIFE INSURANCE COMPANY,

IN THE CITY OF NEW YORK.

NEW-YORK, September 21st, 1878. 2475

WALTON DWIGHT, Esq.,  
Binghamton, N. Y.

*Dear Sir.*—Your favor of the 11th inst. contains information in regard to your personal history, withheld from us in your application, on which our policy 42,120 was issued. The information is of a character that was specially inquired after in your application, and which, if given to us therein,

would have caused us to decline issuing a policy on your life. We have no doubt that, recognizing, as you must, what our legal and equitable rights are, and what our defense would be if the policy became a claim against us, that you would prefer, as we would, to end the matter now. We therefore  
 2476 fore notify you, that we do not and will not regard the insurance on your life as valid or binding on this company, and that we do, and will regard and treat the same as null and void *ab initio*; and for the purpose of making a peaceable adjustment of the matter, we request that you return to us policy 42,120, and the receipt, and upon its receipt we will forward you our check for the amount of the quarterly premium paid by you to Mr. Batchelder on said policy.

Awaiting your early reply,

We remain, yours truly,

2477

JAMES BUELL,

*Prest."*

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**Exhibit 49.**

[Read at page 176.]

“UNITED STATES LIFE INS. COMPANY IN  
THE CITY OF NEW YORK.

NEW-YORK, Oct. 3, 1878.

WALTON DWIGHT, Esq.,  
Binghamton, N. Y.

2478

*Dear Sir.*—We wrote you Sept. 21, 1878, requesting the return to us of the policy issued by us under a misapprehension of facts, on the discovery of which afterwards, for the first time, we promptly notified you, and we have received no reply from you.

We hereby demand the return to us of our policy, number 42,120, and the premium receipt



with it, and hereby and herewith tender to you the full amount paid us on the policy by you as for the first quarterly premium.

This will be handed you by N. B. Freeman, Esq., special agent of this company, for this purpose, who will accept from you, for us, our policy 42,120, and the receipt for the first quarterly premium, and hand you the above mentioned amount for the purpose of peacefully and harmoniously settling the matter referred to in our letter of September 21st, a copy of which letter we have furnished to Mr. Freeman. 2479

Yours very truly,  
JAMES BUELL,  
*President.*"

**Exhibit 50.**

[Read at page 178.] 2480

BINGHAMTON, N. Y., Sept. 11, 1878.

JAMES BUELL, Esq.,

*Prest. United States Life Insurance Company.*

*Dear Sir.*—Yours of the 9th duly forwarded to me here; in reply, note covered simply what it explains. There is nothing in this spitting of blood, &c. About eleven years ago, I was for some time exploring timber land in Canada; was much exposed, caught cold, and for some weeks coughed very hard. At times, I would strain severely; it would start my nose bleeding, and sometimes I would start a little blood from mouth and throat. There was no affection of the lungs, nor never has been. Soon after this I took out some life insurance, and mentioned having spit blood from the mouth, throat and teeth. It was then of such recent date I deemed it proper to mention it in my then application. In taking out my present insurance, in answer to questions of spitting of blood, I 2481

have invariably answered, no,—as there has never been, in the sense contemplated by the question, as I understand, and as I understood by my examiners. If I am not a sound lunged man, I don't believe there is one in the United States, and in all my application, I have insisted upon putting the  
 2482 worst side out, as to myself and family record.

Hastily, yours,

WALTON DWIGHT.

P. S.—Unless blown up on a steamboat, smashed in a railroad accident, or meet with death in some such way, I think I bid fair to live long enough to give myself more trouble in meeting my premiums than you in any lung affection."

2483

2484

### Exhibit 51.

[ Introduced at page 198.]

**Exhibit 52.**

[Read at page 215.]

THE WESTERN UNION TELEGRAPH COMPANY.

Dated Albany, N. Y., 26, 1878.

Received at

2488 To N. W. BLANCHARD :

If you haven't delivered policy, please return it,  
as I have received the following dispatch from the  
N. Y. Mutual. Return Walton Dwight's policy ;  
we prefer not to write on him.

W. FRANK WINSHIP.

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**Exhibit 53.**

[Read at page 215.]

THE WESTERN UNION TELEGRAPH COMPANY.

2489 Half Rate Message.

NEW-YORK, Aug. 26, 1878.

To W. FRANK WINSHIP,  
*Agt. Union Mutual Life Ins. Co.,*  
Albany, N. Y.

Walton Dwight's policy in Union Mutual with  
others is delivered. What's the matter?

N. W. BATCHELDER.

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**Exhibit 54.**

[Read at page 216.]

2490 THE WESTERN UNION TELEGRAPH COMPANY.

Half Rate Message.

NEW YORK, Aug. 26, 1878.

To JOHN DEWITT,  
*Pres't Union Mutual Life Ins. Co.,*  
Boston, Mass.

Have just received despatch from Winship ag't,

at Albany, asking return of Walton Dwight's policy. Mr. Dwight has already settled his premium. What's the matter? Answer immediately at St. Nicholas Hotel.

N. W. BATCHELDER.

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2491

**Exhibit 55.**

[Read at page 217.]

THE WESTERN UNION TELEGRAPH COMPANY.

Dated BINGHAMTON, N. Y., Sept. 4th, 1878.

To N. W. BATCHELDER,

71 State St.,

Albany, N. Y.:

Will be in Binghamton the fifth and sixth. Come when you are all ready.

WALTON DWIGHT.

2492

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**Exhibit 56.**

[Read at page 217.]

THE WESTERN UNION TELEGRAPH COMPANY.

ALBANY, Sept. 5th, 1878.

To COL. WALTON DWIGHT,

c/o Spaulding House,

Binghamton, N. Y.

Will meet you at Binghamton on Friday on the two o'clock train.

N. W. BATCHELDER.

2493

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**Exhibit 57.**

[Read at page 220.]

Policy of insurance of the Brooklyn Life Insurance Company of New York; No. 17,152;



amount, \$5,000; date, 31st of August, 1878; insuring, the life of Walton Dwight for the benefit of the assured, his executors, administrators and assigns; premium, \$43, payable quarterly. At the foot of the policy is this notice: "No person, except the President or Secretary, is authorized to

2494 make, alter or discharge contracts, or waive forfeitures." The consideration of the policy is stated to be representations made to them in the application for this policy, and all the statements respecting the person and family of the person whose life is hereby insured, submitted in writing by or for such person to said company, which application and statements are hereby referred to and made part of this contract; and the sum of \$45 to them payable by the assured, and a quarterly premium of \$43 to be paid on or before the 31st of August, November, February and May, in each and every year during

2495 the continuance of the policy. This policy is issued and accepted by the assured upon the following express conditions and agreements, and in the first subdivision is the following: "If any of the statements or declarations made in the first application for this policy, upon the faith of which this policy is issued, shall be found untrue, then, and in each and every such case, this policy shall be null and void.

"3d. If the said premium shall not be paid on or before the date of payment mentioned above, at the office of the company, in the City of New-York, unless otherwise expressly agreed in writing,

2496 or to agents, when they produce receipts signed by the president or secretary or cashier, then, in every such case, the said company shall not be liable for the payment of the sum assured, or any part thereof."

Attached to the policy is a receipt in these words: "Brooklyn Life Insurance Company, Nos. 320 & 322 Broadway. New-York, August 31st, 1878, Walton Dwight. Policy No. 17,152; amount, \$5,000; term, life; amount of quarterly premium,

\$43. Received payment, William Dutcher, Secretary.

"N. B. Agents must not deliver a policy until the premium is received, as no policy is in force until paid for."

Stamped upon it are the words: "Dated Sept. 4th, 1878. Brooklyn Life Insurance Company." 2497

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**Exhibit 58.**

[Read at page 220.]

Policy of insurance of the Berkshire Life Insurance Company, No. 15,259.

Term, life.

Amount, \$10,000.

Date, 24th August, 1878.

Insuring the life of Walton Dwight for the benefit of his executors, administrators or assigns. 2498

Premium, \$86.70, payable quarterly.

The policy witnesseth that the company, in consideration of the representations made in application No. 15,259 ;—on which policy is this : "This policy is issued, and in consideration of the sum of \$86.70 to be paid by Walton Dwight on or before the 24th day of August, November, February and May, at noon in every year during the continuance of this policy, we insure the life of Walton Dwight in the sum of \$10,000, for the term of life, payable to his executors, administrators or assigns." 2499

Conditions, among others: "If the representations made in the application which forms a part of this contract, and upon the faith of which this agreement is made, shall be found in any respect untrue, then, in every such case this policy shall be null and void ; also in case the said party shall not pay the said premium on or before the several days mentioned for the payment thereof, or shall

fail to pay when due any notes or other obligations given for premium, or shall otherwise fail to comply with all or any of the terms of this contract, then, in every such case the company shall not be liable for the payment of any sum on account of this policy, and it shall cease and terminate.”

2500

Attached to this policy is a receipt in the following form: “Office of the Berkshire Life Insurance Company, Pittsfield, Mass. August 24, 1878. Due this day, as per margin. Premium on Policy No. 15,259, on the life of Walton Dwight, for three months from this date. N. W. Batchelder, Solicitor, at Albany, N. Y., hereby authorized to receive the amount of said premium, and give receipt for the same. William R. Plunkett, President.

2501

N. B.—Agents are not allowed to waive, change or alter in any form or manner, the terms or conditions of policies, or to reduce the terms, and no agent has authority to make collections on account of the Company, except upon receipts, in printed form issued from the home office, in Pittsfield, Mass. and signed by the President or Secretary.”

In the margin is this: “Policy No. 15,259, cash premium, \$86.76.” Below which is, “Received amount as above the 6th day of September, 1878. N. W. Batchelder.”

Printed on the back of form of receipt is this: “By virtue of this policy the assured is hereby notified that he is a member of the Berkshire Life Insurance Company, and that the annual meetings of said Company are holden each year, at 2 P. M.”

2502

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**Exhibit 59.**

[Read at page 221.]

Policy of Insurance of the Homeopathic Life Insurance Company of the City of New-York.

No. 10,592.

Amount \$5,000.

Date the 4th day of September, 1878.

Insuring the life of Walton Dwight for the benefit of his legal representatives.

Premium \$52.41.

Payable quarterly.

2503

"In considerations of the representations, which representations it is hereby agreed shall have the force and effect of warranties, made to it in the application for this policy, which is hereby made a part of this contract, and of the sum of \$52.41 to it in hand paid by Walton Dwight, and of the quarterly payment of the like amount to the Company, or its authorized agent, or the production by him of receipts signed by the President or Secretary on or before the 1st days of December, March, June or September during every year during the continuance of this policy until the 1st day of June in the year 1898 inclusive, does insure the life of Walton Dwight, Real Estate and Grain Dealer, of Windsor, in the County of Broome, in the State of New-York, in the amount of \$5,000, for the term of his natural life, commencing on the 1st day of September, 1878; and the said company does hereby promise and agree to pay the amount of the said insurance at its office in the City of New-York, to the said Walton Dwight's legal representatives, in thirty days after due notice and proof of death of the said party whose life is hereby insured. The balance of the year's premium, if any, being first deducted therefrom. This insurance, after three annual premiums shall have been paid thereon, shall not be forfeited nor become void, by reason of the non-payment of any subsequent premium, but the party insured shall be entitled to receive a paid-up policy for as many twentieth parts of the original amount hereby assured, as there shall have been complete annual premiums at the time when such default shall first be made, provided that this

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2505

policy shall be duly surrendered, and such paid-up policy applied for within sixty days after said default. Such paid-up policy shall be without participation in the future profits of the Company.

2506 It is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said party whose life is hereby assured, shall be personally engaged, &c."

Among the conditions is the following :

"If any of the material statements or declarations made in the application for this policy, shall be found untrue, then this policy shall be null and void.

2507 "Agents of the Company are not authorized to bind the Company in any way, their duties being simply the reception and transmission of applications and premiums, under the rules and instructions of the Company.

"This policy is made and accepted upon the conditions herein contained, and is not binding upon the Company until the premium is actually paid to, and received by the Company, or authorized agents."

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**Exhibit 60.**

[Read at page 221.]

2508 Policy of insurance of the Manhattan Life Insurance Company of New-York.

No. 43,476.

Amount, \$5,000.

Date, August 24, 1878.

Insuring the life of Walton Dwight.

Payable to the executors, administrators or assigns of the assured.

Premium, \$43, payable quarterly.

"The policy witnesseth that 'the Company, in



consideration of the representations made to them in the application for this policy, and in the statements respecting the person, or family of the person whose life is hereby insured, which application and statements are hereby referred to and made a part of this contract, and are to be mutually regarded as warranties, and upon the faith of which application, statements and representation, this policy is issued, and of the sum of \$43 to them in hand paid, and of the further sum of \$43 to be paid at their office in the city of New-York, on or before the 24th day of November, February, May and August, at noon, in every year, assure the life of Walton Dwight in the sum of \$5,000, for the term of his natural life.

"This policy is executed and accepted upon the following express conditions :

"1st. That this policy shall not take effect until the first premium hereinbefore specified shall have been paid, in cash, during the lifetime of the person whose life is hereby insured, and that if any subsequent premiums on this policy shall not be paid, in cash, on or before the date when due, then this policy shall cease and determine.

"2d. That no premium hereon shall be deemed paid unless it be paid in cash, and a renewal receipt duly signed by the president or secretary of this Company shall have been given therefor at the time of such payment. \* \* \*

"9th. That no agent of this Company shall make any contract binding this Company, nor alter nor change any condition, nor waive the forfeiture of this policy."

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**Exhibit 61.**

[Read at page 221.]

Policy of insurance of the Manhattan Life Insurance Company of New-York.

No. 43,487.

Amount, \$5,000.

Date, 27th of August, 1878.

Insuring the life of Walton Dwight.

Payable to the executors, administrators or assigns of the assured.

2512 Premium, \$43, payable quarterly.

Kind of policy, plain life.

“The policy witnesseth that the Company, in consideration of the representations made to them; in the application for the policy, and in the statements respecting the person, or the family of the person, whose life is hereby insured, which application and statements are hereby referred to and made a part of the contract, and are to be mutually regarded as warranties, and upon the faith of these applications, statements and representations, this policy is issued, and the sum of \$43 to them in hand paid, and of the further sum of \$43 to be paid at their office in the city of New-York, on or before the 27th day of November, February, May, and August, at noon in each year during the continuance of this policy, assuring the life of Walton Dwight for the amount stated.”

2513

The conditions in this policy are precisely the same as in the last exhibit.

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**Exhibit 62.**

2514

[Read at page 221.]

Policy of Insurance of the Manhattan Life Insurance Company of New-York.

No. 43,506.

Amount, \$5,000.

Dated September 4th, 1878.

Insuring the life of Walton Dwight, payable to the administrators, executors or assigns of the assured.

Premium \$43, payable quarterly on the fourth days of September, March, June and December.

Kind of policy, plain life.

The terms and conditions of this policy are precisely the same as in the last policy of the Company.

Premium receipt attached to the policy. "Re- 2515  
ceived, Binghamton, New-York, September 10,  
1878, of H. C. Hermans, for Walton Dwight, \$86,  
payment in full for first quarterly premium of two  
\$5,000 policies in the Manhattan Life Insurance  
Company.

(Signed) SLOSSON & MONROE,  
*Agents.'*"

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**Exhibit 63.**

[Read at page 221.]

2516

Policy of insurance of the Metropolitan Insurance Company of New-York.

No. 61,246.

Amount, \$10,000.

Dated, September 1, 1878.

Insuring the life of Walton Dwight, payable to the assured, or executors, administrators and assigns.

Premium, payable quarterly, \$86.

"This policy witnesseth that the Company, in consideration of the representations and agreements in the application for the policy which is hereby referred to, and made a part of this contract, and upon the payment of the sum of \$86 by the assured, Walton Dwight, and of the quarterly annual payment of the like amount, to be paid on or before twelve o'clock noon, on the first days of September, December, March and June, in every year during the continuance of the policy, insuring the life of Walton Dwight in the amount of \$10,000, 2517

payable to the assured aforesaid, or executors, administrators and assigns. This policy is issued by said Company, and accepted by said assured, on the following express conditions and agreements."

Among the conditions is the following: "Nor shall this policy, although delivered, take effect or  
 2518 be in force, until the whole amount of the first premium is actually paid in the lawful currency of this country, during the lifetime of the person insured, and while he is in sound health, and no officer or agent of the said Company has power or authority to deliver this policy until such actual payments, nor to waive the actual payment of said premium, on the delivery of this policy."

"Should any of the statements or declarations which are hereby declared warranties made in the application, and on the faith of which this policy is issued, be found untrue, then in either such case this policy shall become, and be null and void."

2519 Attached to the policy is the following receipt:

"Metropolitan Life Insurance Company: three months' premium, due September 1st, 1878; received from the owner of policy No. 61,246, \$86, which continues said policy in force until the first day of December, 1878, at noon, in accordance with its terms and conditions; not binding upon the company until the premium is paid." And this receipt is signed by P. K. Burhans, agent.

Signed, John R. Hegeman, Vice-President, and countersigned by P. K. Burhans."

2520

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**Exhibit 64.**

[Read at page 221.]

Policy of insurance of The Mutual Benefit Life Insurance Company of New Jersey, No. 92,738.

Amount, \$5,000.

Date, 1st of August, 1878.

Insuring the life of Walton Dwight.

Payable to the assured, executors, administrators or assigns.

Premium, \$83.30, payable semi-annually.

“ This policy witnesseth, that the company, in consideration of the representations to them in the application for the policy, and of the sum of 2521 \$83.30, to them in hand paid by Walton Dwight, and of the semi-annual premium of \$83.30 being paid on the 1st days of August and February of every year, insures the life of Walton Dwight in the sum of \$5,000 for the term of life.

And it is also understood and agreed by the within assured, to be the true intent and meaning hereof; that if the declarations made by or for the said assured, and bearing date on the 1st day of August, 1878, and upon the faith of which this agreement is made, shall be found in any respect untrue, then, and in such case, this policy shall be null and void. Or in case the said premium shall 2522 not be paid on or before the several days herein-before mentioned for the payment thereof, at the office of the company, in the city of Newark, or to their agents, when they produce receipts signed by the president or treasurer, then, and in every such case, the said company shall not be liable for the payment of the sum insured, or any part thereof, and this policy shall cease and determine; but, after two or more full years of premium shall have been paid thereon, the company shall issue a paid-up policy, insuring an equitable sum payable at death, provided application shall be made for the same, 2523 and the policy and profits thereon shall be surrendered within three months after its lapse. This policy does not take effect until the premium is paid. Nor are agents authorized, to alter or discharge contracts or waive forfeitures, or grant permits.



**Exhibit 65.**

[Read at page 221.]

Policy of insurance of the Mutual Benefit Life Insurance Company of New Jersey, No. 92,764.

Amount, \$5,000.

Date, first day of August, 1878.

- 2524 Insuring the life of Walton Dwight, for the benefit of the assured, his executors, administrators or assigns.

Premium, \$83.20.

Payable semi-annually, on the first days of August and February.

This policy contains the same conditions precisely as the last preceding exhibit.

**Exhibit 66.**

2525

[Read at page 221.]

Policy of insurance of the National Life Insurance Company of Montpelier, Vermont, No. 1,132.

Amount, \$10,000.

Dated August 23d, 1878.

Insuring the life of Walton Dwight, for the benefit of his son, Frank Dwight.

Premium \$84, payable quarterly.

- 2526 "This policy witnesseth, that the Company, in consideration of the premium of \$84 paid by Walton Dwight, being the assured in this policy, and of a like sum to be paid to them by the assured on or before the 23d day of August, November, February and May in every year during the continuance of the policy, insures the life of Walton Dwight, for the benefit of his only son, Frank Dwight, to the amount of \$10,000, for the term of his natural life."

It contains the following conditions, among

others : "It is also a condition of this policy, that if the statements made in the application for this policy on the part of the said assured to said Company as the basis of said contract shall be found in any respect untrue, which is material to the risk, then this policy shall be null and void."

"It is a further condition of this policy, that this Company cannot be held or considered as having 2527 any notice or knowledge of any answers, statements or declarations, which are not contained in the application made for this policy, and in case the premium shall not be paid to the said company on or before the day therein mentioned for the payment of the same, and in the lifetime of the assured, then, in every such case, the Company shall not be liable for the payment of the sum insured, or any part thereof, and this policy shall cease and determine."

With the proviso following: After three or more annual premiums have been paid, the holder 2528 shall be entitled to a paid up policy for as many dollars as have been paid."

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**Exhibit 67.**

[Read at page 221.]

Policy of insurance of the New England Mutual Life Insurance Company, Boston.

No. 60,772.

Amount, \$10,000.

Date, September 2d, 1878.

2529

Insuring the life of Walton Dwight for the benefit of his executors, administrators or assigns.

Premium, \$326, payable annually.

"This Company, in consideration of the payment of \$326 this day made by Walton Dwight, being the assured in this policy, and of the punctual payment of a like sum to be made in the same

manner to them at their office in Boston, or to their agent duly authorized, on or before the second day of September in every year during the continuance of this policy, do promise and agree to pay at their office in Boston the amount of \$10,000 to the said Walton Dwight, his executors, administrators or assigns, within sixty days after due proof of his death."

2530. The conditions stated, upon which the policy is issued, contain the following: "That the statements and declarations made by and on behalf of the assured in the application for this policy, which are hereby referred to as the basis of this contract, and are a part of it, and upon the faith of which it is issued, are in all respects true, and that no fact has been repressed relating to the health or circumstances of the insured affecting the interests of said Company, or other inducement to accept the risk. This policy shall not take effect until the first premium is actually paid, and agents are not authorized to deliver policy to the assured until such payment has been made. General agents appointed directly by the Company are alone authorized to receive premiums at the date when payable, and not afterwards, but not to give credit, or make, alter or discharge contracts, or waive forfeitures. All premiums due under this policy shall be paid in advance, but any annual premium may, at the election of the assured, be paid in cash, either in one sum or in semi-annual or quarterly instalments, to be secured by the notes of the assured."

2532. On the back is this endorsement of payment of premium: "The following sums have been received at the annexed dates respectively, viz.: September, 1878, premium, \$326; cash, \$83; quarterly notes, three, of \$81 each. William B. Turner. By virtue of this policy, the assured is hereby notified that he is a member of the New England Mutual Life Insurance Company, and that the annual meetings of the said Company are holden at

its home office on the fourth Monday of January in each year, 'at 11 o'clock A. M.'"

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**Exhibit 68.**

[Read at page 221.]

2533

Policy of insurance of the New-York Life Insurance Company, No. 133,239.

Amount, \$10,000.

Dated 27th of August, 1878.

Insuring the life of Walton Dwight, for the benefit of Frank Dwight, or his legal representatives.

Premium, \$344, payable quarterly.

"This policy witnesseth that the Company, in consideration of the statements and representations submitted to its officers at the home office at the city of New-York, and contained in the written application for this policy, and in the declaration thereto subjoined, all of which statements and representations have been, and are hereby warranted by the applicant to be true, and are, by the parties hereto referred to and made a part of this contract, upon the faith of which statements and representations this policy is issued; and of the sum of \$86 to them in hand paid, and of the annual premium of \$344 to be paid in like manner and sums as per margin, in every year during the continuance of this policy, doth insure the life of Walton Dwight in the amount stated. "Amount payable to Frank Dwight, son of Walton Dwight, or his legal representatives.

2534

2535

In the margin appears the following statement: "Annual premium, \$344; payable, \$86, August 27, November 27, February 27, and May 27; quarterly payments.

Among the conditions upon which this policy is

said to be issued and accepted are the following:

2536 "If any of the statements or representations hereinbefore in the first paragraph of this policy referred to shall be found in any respect untrue, then, and in every such case, this policy shall be null and void.

"If the premiums as above stipulated shall not be paid on or before the days above mentioned for the payment thereof, at the office of this company, in the city of New-York, unless otherwise expressly agreed in writing, or to agents when they produce receipts signed by the president, vice-president or actuary, then, and in every such case, this company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine. Claims for paid-up policy, as hereinafter provided for, excepted."

2537 "4th. Receipts for premium are not valid unless signed by the president, vice-president or actuary."

"5th. Agents of the Company are not authorized to make, alter or discharge contracts or waive forfeitures."

2538 "6th. Inasmuch as only the officers at the home office of the Company, in the city of New-York, have authority to determine whether or not a policy shall issue upon any application, and as they act on the written statements and representations hereinbefore referred to, it is expressly understood and agreed that no statement, representation, or information made or given by or to the person soliciting or taking the application for this policy, or to any other person, shall be binding upon the company, or in any manner affect its rights, unless such statement, representation or information, be reduced to writing, and be presented to the officers of the Company at the home office in the application referred to."



Attached to the policy, on the fly-leaf, is a copy of an application, which is for \$20,000, which has written across the face of it, "Approved for \$10,000 policy." And in which appear the same answers and questions as to whether the party has had or been afflicted since childhood with any of various complaints, including spitting of blood, pulmonary complaint, diseases of the lungs, and the answer is "No" to each. 2539

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**Exhibit 69.**

[Read at page 221.]

Policy of insurance of the Northwestern Mutual Life Insurance Company, No. 97,026.

Dated 23d of August, 1878.

Amount \$5,000. 2540

Insuring the life of Walton Dwight.

For the benefit of himself.

Premium \$43.25.

Payable quarterly.

The policy recites, "In consideration of the representations made in the application therefor, and the premium in advance, as herein stipulated, consisting of a quarter cash premium of \$43.25, to be paid on or before the 23d day of August, November, February and May, insures the life of Walton Dwight for the benefit of himself. This policy shall not take effect and become binding on the company until the premium shall be actually paid, while the person whose life is assured is in good health, to the company, or some person authorized by them to receive it, who shall countersign the policy upon receipt of the premium : and is issued and accepted by the parties in interest, on the following express conditions :"

2541

Among others, in the second sub division, is this : "If any of the statements and declarations

in the application for this policy, and upon the faith of which it is issued, shall be found in any material respect untrue, then, and in every such case, the policy shall be null and void.

2542 “3d. If the said premium shall not be paid on or before the days mentioned for the payment thereof, then, in every such case, this policy shall cease and determine, and no premium on this policy shall be considered to be paid, unless a receipt shall be given therefor, signed by the President or Secretary.”

On the back is the following: “Agents having the receipts, and they only, will receive the premiums when due, or before, but agents are not authorized to waive forfeitures, to make, alter or discharge contracts, and no receipt will be received by the company unless signed by one of its officers and countersigned by the agent.”

2543 Annexed to this policy is a copy of the application already in evidence.

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**Exhibit 70.**

[Read at page 221.]

Policy of insurance of the Northwestern Mutual Life Insurance Company, No. 97,027.

Dated August 23d, 1878.

Amount \$3,000.

Insuring the life of Walton Dwight.

2544 For the benefit of himself.

Premium \$25 95.

Payable quarterly.

This policy is upon a blank of the same description as the last exhibit, upon the same terms and conditions.

Annexed to this policy is a copy of the application already in evidence.

**Exhibit 71.**

[Read at page 222.]

Policy of insurance of the Northwestern Mutual Life Insurance Company, No. 97,028.

Amount, \$1,000.

Date, August 23d, 1878.

2545

Insuring the life of Walton Dwight for the benefit of himself.

Premium \$8.65 payable quarterly.

This is upon the same printed form as the preceding exhibit, and contains the same conditions and stipulations.

Annexed to this policy is a copy of the application already in evidence.

**Exhibit 72.**

[Read at page 222.]

2546

Policy of insurance of the Northwestern Mutual Life Insurance Company, No. 97,023.

Amount, \$5,000.

Date, 23d August, 1878.

Insuring the life of Walton Dwight for the benefit of himself.

Premium \$43.25, payable quarterly.

This is upon the same form of contract as the last exhibit, and contains the same conditions and stipulations, and has attached to it a copy of the same application.

The last four policies were issued on one application.

2547

**Exhibit 73.**

[Read at page 222.]

Policy of insurance of the State Mutual Life In-

surance Company of Worcester, Mass., No. 11,023.

Date, first of September, 1878.

Amount, \$10,000.

Insuring the life of Walton Dwight for the benefit of his legal representatives.

2548 Premium \$327.08, payable annually.

“This policy witnesseth, that the Company, in consideration of the representations made to them in the application therefor, and the sum of \$327.08 to them paid, and of a like sum to be paid to them, or to their agent duly authorized, on or before the 1st day of September at noon, in each year, do insure the life of Walton Dwight in the sum of \$10,000, for the term of his life, payable to his legal representatives. This policy is issued and accepted by the assured on the following express conditions and agreements: That the answers, statements, representations and declarations made in, or endorsed upon the application for this policy, which forms a part of this contract and on the faith of which it is issued, are in all respects true and if any fact relating to the health, habits or circumstances of the insured has been suppressed or misrepresented, then the policy shall be null and void. And if the annual premiums shall not be paid at the time and in the manner prescribed, the policy shall become forfeited and void, except as provided in the Massachusetts statutes. The policy shall not take effect until the premium is paid, and agents are not authorized to deliver policy until such payment has been made.”

2550 Endorsed upon this policy is this paragraph:

“By virtue of this policy the holder hereof is hereby notified that he is a member of the State Mutual Life Insurance Company of Worcester, Mass., and that the annual meetings of said Company are holden at its home office on the first Wednesday of each year, at ten o'clock in the forenoon.”

Inside, on the fly-leaf, is the following notice:

“Premiums are due and payable at the office of

the Company in Worcester, Mass., but, for convenience, the Company may appoint agents in various localities to receive the same, whose authority the policyholder may recognize only upon the production by said agents of a receipt for the premium, signed by the Secretary."

2551

On the face of the policy is this : "This policy and any amount that may become due for loss thereon, is assigned and hypothecated to said company, and they have a lien thereon, to secure the payment of any premium or notes thereon, on which credits have been given, and of any notes or securities given, or to be given, to said company, and upon non payment of such notes or securities for the payment of the same, shall become forfeited and void."

2552

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**Exhibit 74.**

[Read at page 222.]

Policy of insurance of the Traveller's Insurance Company, Life Department, of Hartford, Conn., No. 29,653.

Amount \$10,000.

Date August 28th, 1878.

Insuring life of Walton Dwight for the benefit of his legal representatives.

Premium \$65.78, payable quarterly.

Consideration stated to be "warranties made in the application for the policy, and the quarterly premium."

2553

This policy is issued and accepted on the following express agreements, which are conditions precedent to the contract.

"1st. That it is warranted by the insured and assured, that all and several the declarations and answers contained in or endorsed upon the application, for this insurance, which application is hereby



referred to and made a part of this contract, are the full, complete and only answers made by the insured or assured ; that they are correctly recorded and wholly and strictly true ; and that if the policy has been otherwise obtained, through any fraud, misrepresentation, evasion or concealment, then  
 2554 this policy shall be absolutely null and void.

Note : Agents of the Company are not authorized to make, alter or discharge contracts, give credits, grant permits or waive any of the conditions of this policy."

Printed on the inside is this : "Note No. 1 : Renewals of this policy are to be made by receipts issued from the office of the Company, signed by the Secretary, and to be countersigned by specified agents of the Company, provided, however, the premiums for which receipts are issued, shall be paid to such agents on or before the day  
 2555 such premiums are due. Note No. 2 : The possession of this policy alone, by the parties in benefit, is not evidence that insurance has been finally effected on the life of the person named therein, as the insurance is not complete until the first premium is actually paid, and the first premium receipt properly countersigned by the agent therein delivered with the policy."

Attached to this was a memorandum receipt signed "Rodney Dennis, Secretary, dated August 28, 1878, and countersigned August 28, 1878, by George W. Sherman & Co., Albany, New-York."

2556

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**Exhibit 75.**

[Read at page 222.]

Policy of insurance of the Washington Life Insurance Company, No. 35,656.

Amount \$5,000.

Dated 19th August, 1878.

Term, natural life.

Insuring the life of Walton Dwight, for the benefit of the assured, his executors, administrators or assigns.

Premium \$43 payable quarterly.

"This policy witnesseth, that it is issued in consideration of the representations made in the application for the policy, and the sum of \$43 paid by the assured, and of the quarterly premium of \$43 to be paid on or before the 19th day of November, February, May and August in every year, during the continuance of the policy. This policy is issued and accepted by the assured upon the following express conditions and agreements :"

Among the conditions is the following : "If any of the statements or declarations made in the application for this policy, upon the faith of which this policy is issued, shall be found in any respect untrue, or if the said premium shall not be paid on or before the days above mentioned for the payment thereof, at the office of the Company at the city of New-York, or to agents when they produce receipts signed by the President or Secretary, then, in every such case the said Company shall not be liable for the sum insured or any part thereof, and this policy shall be null and void, and shall cease and determine, except only, in the case of the due surrender of the policy, as herein provided."

At the foot of the policy is the following : "No person except the president, vice-president or secretary is authorized to make, alter or discharge contracts, or to waive forfeitures."

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**Exhibit 76.**

[Read at page 222.]

Policy of insurance of the Washington Life Insurance Company, No. 35,660; amount, \$500, dated 19th

of August, 1878, insuring the life of Walton Dwight, payable for the benefit of the assured, his executors, administrators or assigns; premium, \$4.30, payable quarterly.

It is in the same form and subject to the same conditions in all respects as the previous exhibit.

2560

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**Exhibit 77.**

[Read at page 222.]

Policy of insurance of the Washington Life Insurance Company, No. 35,661; amount, \$500; date, 19th August, 1878; insuring the life of Walton Dwight, payable for the benefit of the assured, his executors, administrators or assigns; premium, \$4.30, payable quarterly on the 19th day of November, February, May and August.

2561

This policy, in its terms, is in all respects like the former exhibit, being a policy issued by the same Company, and filled up on a blank of the same issue.

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**Exhibit 78.**

[Read at page 222.]

Policy of insurance of the Washington Life Insurance Company, No. 35,662; amount, \$500; date, 19th August, 1878, insuring the life of Walton Dwight; payable to the assured, executors, administrators or assigns; premium, \$4.30, payable quarterly, on or before the 19th days of November, February, May and August.

2562

This is also made on a blank of the same issue, containing the same conditions and stipulations as the policies already introduced in evidence issued by the same Company.

**Exhibit 79.**

[Read at page 222.]

Policy of insurance of the Washington Life Insurance Company of the City of New-York, No. 35,663; amount, \$500; dated August 19, 1878; insuring the life of Walton Dwight; payable to the assured, his executors, administrators or assigns; premium, \$4.30, payable quarterly, on or before the 19th days of November, February, May and August. 2563

This is also on one of the blanks of the same issue, containing the same stipulations and conditions.

**Exhibit 80.**

[Read at page 222.]

2564

Policy of insurance of the Washington Life Insurance Company of the City of New-York, No. 35,657; dated 19th August, 1878; amount, \$2,000; insuring the life of Walton Dwight; payable to the assured, his executors, administrators or assigns; premium, \$17.20, payable quarterly, on or before the 19th days of November, February, May and August.

This is also on a blank of the same issue as the last, containing the same stipulations and conditions.

2565

**Exhibit 81.**

[Read at page 222.]

Policy of insurance issued by the Washington

Life Insurance Company of the City of New-York, No. 35,658; amount to \$500; dated 19th August, 1878; insuring the life of Walton Dwight for the term of his natural life, for the benefit of the assured, his executors, administrators or assigns; premium \$4.30, payable quarterly on or before the 19th days of November, February, May and August.

This is also upon a blank of the same issue as the policies issued by the Company already in evidence, and contains the same stipulations and conditions.

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**Exhibit 82.**

[Read at page 222.]

Policy of insurance of the Washington Life Insurance Company of the City of New-York, No. 35, 659, amount, \$500; dated 19th of August, 1878; insuring the life of Walton Dwight, term natural life; payable to the assured, his executors, administrators or assigns; premium \$4.30, payable quarterly, on the 19th day of November, February, May and August.

This is on one of the blanks of the same issue.

The policy, on its face, gives the assured the participation in profits as to all the policies of this Company.

2568



**Exhibit 83.**

[Read at page 290.]

METROPOLITAN LIFE INS. CO.,  
 Corner Park Place and Church St.

NEW-YORK, Oct. 10th, 1878.

2569

MR. P. K. BURIANS, Binghamton, N. Y.:

*Dear Sir.*—We beg to return the account and check for \$87.96, received from you this date.

We regret very much to trouble you with the matter, but we have to instruct you herewith to make a legal tender in money of the premium received on the Dwight policy to the assured in person and demand back the policy.

It was obtained by concealment of facts, misrepresentation and fraud, and by the terms of the warranty over the insured's signature and by the terms of the contract itself the policy was illegally obtained, has no binding effect and is of no value. 2570

If you will take hold of this matter with the determination you are so well endowed with, we will have this policy here in the office within a week.

Yours very truly,

JOHN R. HEGEMAN,  
 V. P.

2571

**Exhibit 86.**

[Read at page 222.]

Policy of insurance of the Manhattan Life Insurance Company of New-York, No. 42,518 ; amount, \$5,000 ; dated September 10, 1878, insuring  
 2572 the life of Walton Dwight, for the benefit of Frank Dwight, his executors, administrators or assigns ; premium \$43 payable quarterly, on the 10th of December, March, June and September ; term, natural life.

The policy states that it is issued in consideration of the representations made to the Company in the application, and in the statements respecting the person, or the family of the person whose life is hereby insured, which application and statement is referred to and made part of the contract, and are to be mutually regarded as warranties, and  
 2573 upon the faith of which applications and statements the policy is issued.

The policy is issued and accepted on the following express conditions : "1st. That this policy shall not take effect until the first premium herein-after specified shall be paid in cash during the lifetime of the person whose life is hereby insured, and, if any subsequent premium on this policy shall not be paid in cash, on or before the day when due, then the policy shall cease and determine. 2d. That no premium herein shall be  
 2574 deemed to be paid, unless it be paid in cash, and a renewal receipt duly signed by the President and Secretary of this Company shall have been given therefor at the time of such payment."

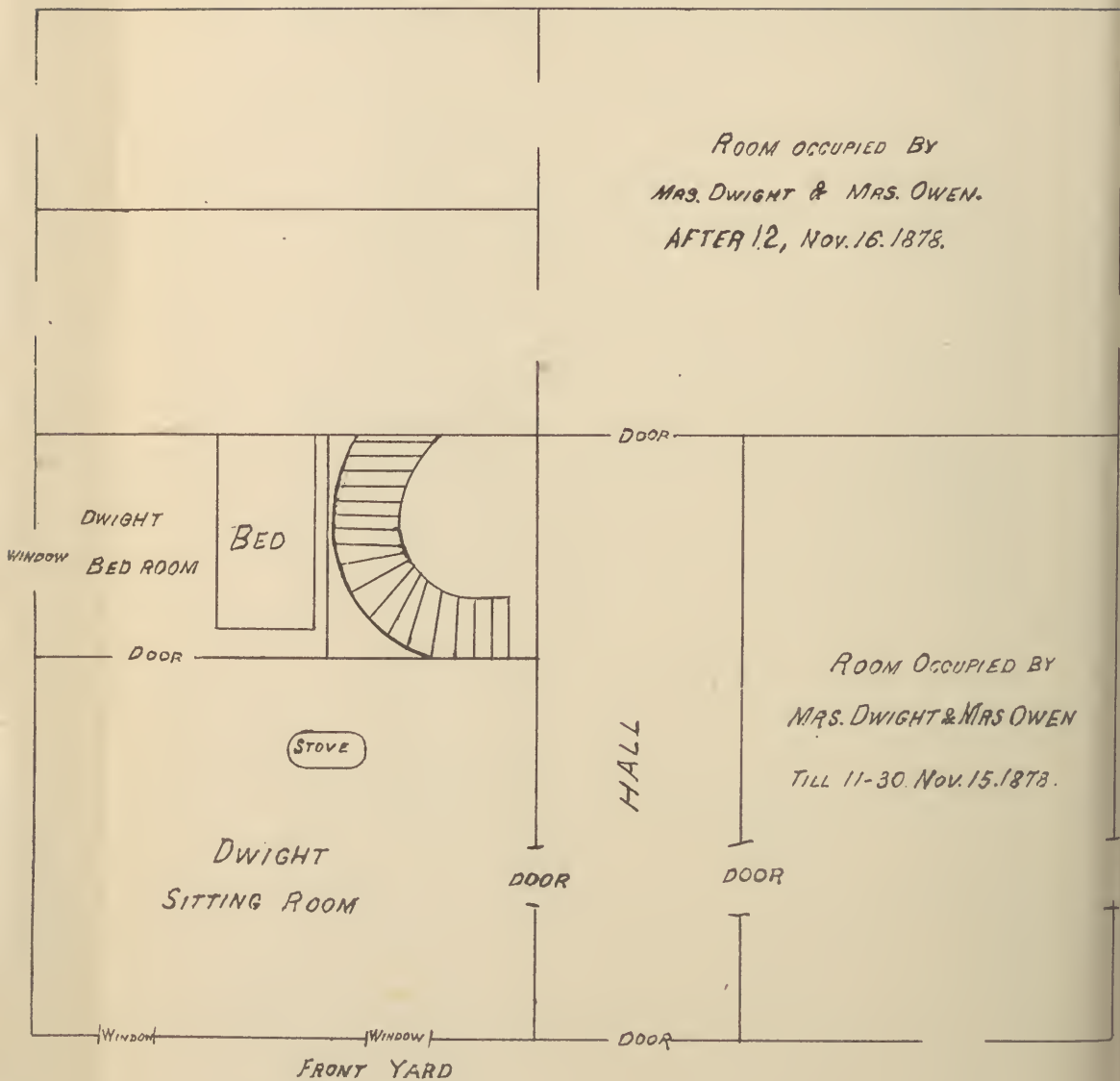
**Exhibit 87.**

[Read at page 222.]

Policy of insurance of the Massachusetts Mutual



EXHIBIT 84. T. C. R.



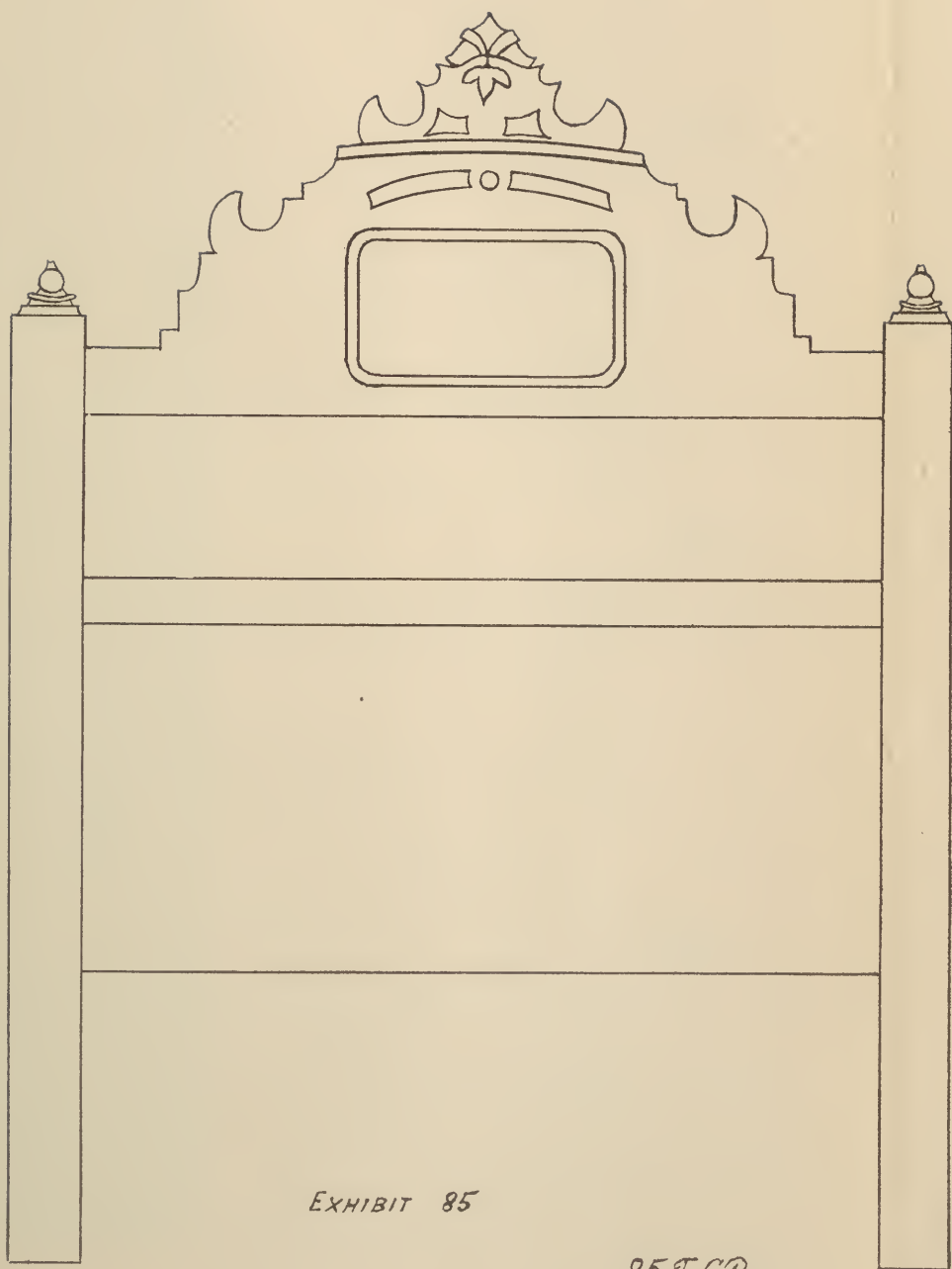


EXHIBIT 85

85 T.C.R.





Life Insurance Company of Springfield, Mass ; amount, \$10,000 ; date, 3d September, 1878 ; insuring the life of Walton Dwight, for the benefit of Frank Dwight, son of Walton Dwight ; premium \$337.84, payable in consecutive quarter annual instalments on the 3d days of September, December, March and June in each year.

2575

The policy is stated to be issued and accepted on the following express conditions :

“ 1st. That the declarations and statements in the application for this policy, when the said application is received by the officers of the said Company at the home office of the said Company, in Springfield, Mass., which application is hereby referred to and made a part of this contract, are to be mutually regarded as warranties, and if said declarations and statements are not, in all respects correct and true, then this policy shall be absolutely null and void.

2576

2d. That this policy shall not take effect until the advance premium herein shall have been paid, during the lifetime of the person whose life is hereby insured ; and that if any subsequent premium, or installment of premium on this policy, shall not be paid on or before the day when due, then this policy shall cease and determine, except as provided in chapter 186, Laws of Commonwealth of Massachusetts, approved April 7th, 1861 ; under the provisions of this law the contract is made.

3d. That no premium or installment of premium hereon shall be considered as paid, unless a receipt shall have been given therefor, at the time of the payment, duly signed by the president or secretary of the said Company ; but in case the annual premium is not all paid at the beginning of the year, the unpaid portion of the year's premium shall always be considered as an indebtedness to the Company. \* \* \*

2577

11th. That no agent of the Company shall make,

any contract binding the Company, nor alter nor change any condition of this policy, nor waive the forfeiture of this policy."

2578

**Exhibit 88.**

[Read at page 223.]

Policy of insurance of the Northwestern Mutual Life Insurance Company, No. 97,029.

Amount, \$1,000.

Date, August 23d, 1878.

Insuring life of Walton Dwight for the benefit of himself, executors, administrators or assigns.

Premium \$8.65, payable quarterly on the 23d day of August, November, February and May in each year.

2579

Stated to be "in consideration of the representations made in the application therefor, and of the premium stated."

"This policy shall not take effect and become binding on the Company until the premium shall be actually paid, while the person whose life is insured is in good health, to the Company or to some person authorized by them to receive it, who shall countersign the policy on receipt of the premium ;— and is issued and accepted by the parties in interest on the following express conditions, &c.:

2580

"If any of the statements or declarations in the application for this policy, and upon the faith of which it is issued, shall be found in any respect untrue, then, and in every such case, this policy shall be null and void.

3. If the said premium shall not be paid on or before the days above mentioned for the payment thereof, then, and in every such case, this policy shall cease and determine, and no premium on this policy shall be considered paid, unless a receipt shall be given therefor, signed by the president or

secretary, when payment and receipt of any premium less than a full annual, shall not have the effect to continue the policy in force longer than three months in case of the quarter payment, or six months in case of the semi-annual payment."

Attached to this policy is a copy of the application upon which it is granted, bearing date, August, 13, 1878, already in evidence. 2581

On the back of the policy is the following endorsement: "Agents, having the receipts, and they only, will receive the premiums when due, or before; but agents are not authorized to waive forfeiture, to make, alter or discharge contracts, and no receipts will be binding on the Company, unless signed by one of the officers, and countersigned by the agent. And no agent has any authority in any case to waive or postpone payments of premiums, and the assured is hereby notified that the only evidence to him of the authority of any agent to receive any premiums on account of this policy, is a receipt in printed form, signed by the President or Secretary of the Company. 2582

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**Exhibit 89.**

[Read at page 223.]

Policy of insurance of the United States Life Insurance Company of the City of New-York, No. 42,120; amount \$10,000; date, August 31st 1878; insuring the life of Walton Dwight for the benefit of the assured, his executors, administrators or assigns. Premium \$86, payable quarterly on the 10th of September, December, March and June. Term, natural life; commencing the 26th of August, 1878, at noon. 2583

Stated to be "in consideration of the application therefor, signed by, or for the assured, hereinafter named, and submitted in writing by or for the as-

2584      sured, to the officers of this Company, subscribing this policy, which application is hereby referred to and made a part of this contract; and to each of the statements, warranties and conditions made and contained therein which, whether signed or written by his or her own hand, or not, every person accepting or acquiring any interest in this contract, hereby adopts as his or her own, admits to be material, and warrants to be full and true, and agrees shall be the only basis upon which this policy is issued."

2585      "Provided always, and it is hereby declared to be the true intent and meaning of this policy, and this Company does issue this policy, and the same is accepted by the assured, and the applicant for this policy, upon these express conditions and agreements namely: That this policy shall not take effect unless and until the advance premium hereon shall have been actually paid, and both the receipt therefor, signed by the President, Secretary, Assistant Secretary or Actuary of the Company, and this policy, be actually delivered in hand to the assured, personally, and by the person thereto expressly authorized by the President of the Company, during the lifetime and sound health of the person whose life is hereby insured. And in case any premium, or instalment thereof, subsequently due as herein stipulated, shall not be paid on or before the respective days above mentioned for the payment thereof; and according to the express terms hereof, or in case any note, check or draft, given in payment, or part payment of any premium, due or to become due hereon, shall not be paid, according to the provisions hereof, at maturity, then, in any, and every such case, this company shall, upon the happening of such, or any such default whatsoever, become, and be thereafter, not liable for the payment of the sum assured hereby, nor any sum or sums whatsoever, by reason hereof. And this assurance shall cease and determine, ex-

2586



cept as hereinafter limited and provided, and that no premium on this policy shall be considered to have been paid in any event unless upon and according to a receipt which is to be given in exchange therefor, signed by the president, secretary, assistant secretary, or actuary of this Company.

3d. It is expressly understood and agreed that 2587  
it is upon the faith that the answers, statements, representations and declarations contained in the application above mentioned, as submitted in writing only to the officers of this Company, described in this policy, are each and every of them true, and the same have been and are hereby warranted by the assured, under this policy, to be true, and upon the faith that the agreements herein contained will be kept and performed; that this Company does issue this policy, and that the same is accepted accordingly, by the applicant and the assured; every and all unwritten and verbal statements and information, if any, made or given by or on behalf 2588  
of said assured, at any time, in any way, to any person or persons, whatsoever, or to said assured by any person or persons whomsoever, and not reduced to writing, and by the assured presented to the officers of the Company at its office in New-York City, before the delivery hereof ordered by them to be made, to the contrary notwithstanding; and that if any of such answers, statements or representations contained in, or endorsed in writing, upon said application, so presented to said officers, shall, at any time during the continuance of this policy, be found in any respect untrue, or said 2589  
agreements be violated, that, thereupon, this insurance shall become and be null, void and of no effect, and the consideration hereof shall be deemed to have failed."

Attached to the policy is a premium receipt signed by C. P. Fraleigh, secretary, dated September 10, 1878, countersigned by N. W. Batchelder, September 6th, 1878, on the back of which is printed

a notice, containing, among other things, "Agents are not, under any circumstances, authorized to sign a receipt of premiums, or extend the time of payment of any premium, or part thereof, in any form or make any change in a receipt, nor to make, alter, modify, nor discharge any contract, whatever, 2590 for the Company, without express authority, in each and every particular case, previously given in writing, subscribed by the president, actuary, secretary or assistant secretary, nor waive forfeiture of any of the conditions of the policy."

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**Exhibit 90.**

[Read at page 223.]

Policy of insurance of the Aetna Life Insurance Company, of Hartford, No. 121,940; amount, \$10, 2591 000; dated August 24th, 1878; countersigned at Albany, September 6th, 1878; insuring the life of Walton Dwight; premium, \$84.22, payable quarterly, on or before the 24th of August, November, February and May; term of policy, life; sum insured payable to Frank Dwight, son of the insured, or, in the event of his death, before that of the insured, to the insured, his executors, administrators or assigns.

Stated to be "In consideration of the declarations made to the company in the application therefor, and of the premium specified."

2592 Stated to be issued and accepted upon the following express conditions and agreements:

"1. The answers, statements, representations and declarations contained in, or endorsed upon, the application for this insurance, which application is hereby referred to and made a part of this contract, are warranted by the assured to be true in all respects; and if this policy has been obtained by or through any fraud, misrepresentation or conceal-

ment, or by any false statements, then this policy shall be absolutely null and void.

"2. This policy shall not take effect until the advance premium hereon shall have been actually paid during the lifetime of the insured; and if any subsequent premium on this policy be not paid when due, during the lifetime of the said insured, 2593 then this policy shall cease and determine, except as hereinafter provided."

On the fly-leaf of this policy is a copy of the application upon which the same was granted, and in which application, in answer to so much of the twelfth question as inquires whether the party ever had, either bronchitis, consumption, asthma, or spitting of blood, the applicant answers "No" to each.

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**Exhibit 91.**

2594

[Read at page 223.]

Policy of insurance of the Union Mutual Life Insurance Company of Maine, No. 88,884.

Amount, \$10,000.

Dated, August 23d, 1878.

Insuring, the life of Walton Dwight, for the benefit of himself, his executors, administrators or assigns.

Premium, \$86, payable quarterly on the 25th days of August, November, February and May, 2595 during each year of the continuance of the contract.

"States consideration to be the application for the policy, which is hereby referred to and made a part of this contract, and of which all the statements made therein, whether written by his own hand or otherwise the person, accepting or acquiring any interest in this contract, hereby adopts as his

own, admits to be material, and warrants to be full and true, and to be the only statements upon which this contract is made."

2596 "1st. If any statements contained in the application for this policy be in any respect untrue, the consideration for this contract shall be deemed to have failed, and the Company shall be without liability thereon."

"2d. If any premium or instalment of premium on this policy shall not be paid when due, the consideration of this contract shall be deemed to have failed, and the Company shall be released from all liability, except as hereinafter provided."

2597 "5th. The contract between the parties hereto is completely set forth in this policy, and application therefore, taken together, and none of its terms can be modified, or any forfeiture under it waived, except by an agreement in writing, signed by the President or Secretary of the Company, whose authority for this purpose will not be delegated."

Attached to the policy is a premium receipt, signed J. P. Carpenter, Secretary, dated August 25th, 1878, for the first quarter annual premium; and endorsed on the receipt is the following:

"Agents are not authorized to make any changes whatever in the receipts for premiums, or to waive a forfeiture of any condition of the policy or premium receipt, and that such can be done only by a writing, signed by the President or Secretary.

2598

**Exhibit 92.**

[Read at page 223.]

## LAST WILL AND TESTAMENT

OF

WALTON DWIGHT.

2599

I, Walton Dwight, of Windsor, Broome County, N. Y., being of sound mind and memory, and considering the uncertainty of life, do therefore make, ordain, publish and declare this to be my last will and testament.

*First.*—I direct, as soon after my death as practicable, that all debts made by me and unadjusted since May, 1877, and in no way including debts in bankruptcy (excepting from said bankrupt debts as specified in the schedule hereto attached), shall be paid in full from my estate.

2600

In addition, I direct that the amounts with interest specified in Schedule A, shall also be paid, unless discharged by me prior to my death. These amounts of indebtedness were made by me to the within named creditors after I had put up to the First National Bank of Binghamton, and other creditors, all the securities possessed either by myself or my wife at that time, when we gave up everything we had in the world to our secured creditors; and they by forcing sale of said securities in the most depressed of times, and thereby not realizing one-half the value of the property, I consider that I have done all that was required of me, as either a christian or a gentleman; that I am not required morally or otherwise to make up a deficit caused by the ill judged and illiberal action of my several creditors; and that the laws of our land discharge an honest bankrupt, and it is right they should. To those who were insecured I feel an honest obligation, and direct that the debts shall

2601



be discharged as above provided, unless I pay them prior to my death.

Schedule A, referred to in the foregoing :

James Dillons, \$9 ; Almerin Johnson, \$7.85 ;  
 John O. Campbell, \$2.63 ; John Kelly, \$26.94 ; H.  
 2602 W. Carl, \$1 ; D. L. W. L. Express Co., \$5.99 ;  
 William Kress, \$2.40 ; Seth Marvin, \$4.20 ; Geo.  
 B. Hollister, \$9.44 ; Otis & Bros., \$26 ; Mason,  
 Pratt & Co., \$1.75 ; F. B. Parmalee, \$6.00 ; Holland  
 & Bros., \$90.68 ; D. L. Brownson, \$261.88 ; John  
 Faney, \$101 ; Barlett Bros., \$18.20 ; Christ's  
 Church, Binghamton, \$37.50 ; Newton & Davis,  
 \$16.36 ; Lawyer Bros., \$55.10 ; T. P. Goodrich,  
 \$1.80 ; John D. Ames, \$1.60 ; T. W. Whitney,  
 \$4.85 ; S. W. Barrett, \$2 ; Benson & Gillespie,  
 \$12.95 ; R. H. Meagley, \$20.05 ; Charles W. Sears,  
 \$21.10 ; Binghamton Gas Light Co., \$237.20 ;  
 2603 Thomas Johnson, \$32.40 ; Reynolds & Townsend,  
 \$13.63 ; Dr. T. L. Brown, \$87.75 ; R. A. Ford,  
 \$30.50 ; L. D. V. Smith, \$30.

*Second.*—I will and bequeath to my friends,  
 Hon. O. W. Chapman and Hon. C. E. Martin, in  
 part recognition of their substantial favors, and  
 more than brotherly kindness towards me in the  
 days of my travail, as follows : To O. W. Chapman,  
 ten thousand dollars ; to Celora E. Martin, five  
 thousand dollars.

*Third.*—I will and bequeath to George Lyon,  
 of the city of Binghamton, as a slight testimonial  
 2604 to him for unvarying courtesy and kindness to me  
 for a series of years, while doing business in the  
 office with which he is connected, the sum of one  
 thousand dollars.

*Fourth.*—I will and bequeath to George B. Ed-  
 wards, as a recognition of his faithfulness while in  
 my service, and as a mark of kindly remembrance,  
 the sum of one thousand dollars : this bequest is

“provisional,” that is to say : the said George B. Edwards shall receive the same if he is so circumstanced at the time of my death that he can hold the said one thousand dollars for his own use and benefit. If it cannot be paid to him so that it will be applied to his personal use and benefit I direct my executors hereinafter named, in their discretion, to hold and invest the same, and apply the income thereof to his personal use and benefit. 2605

*Fifth.*—I will and bequeath to Neri Pine, as a mark of kindly esteem for his promptness in aiding me when I needed friends, the sum of one thousand dollars.

*Sixth.*—I will and bequeath to Ellen Carmady, in recognition of her faithfulness to us, and as a mark of friendly regard, the sum of one thousand dollars. 2606

*Seventh.*—I will and bequeath to William Roberts, the Episcopal clergyman of Windsor, in recognition of his earnest christian work in my native town, and in the belief that he more needs practical assistance than any other clergyman in the County of Broome, owing to the small parish over which he labors, the sum of one thousand dollars.

*Eighth.*—I will and bequeath to Dr. Titus L. Brown, as a mark of kindly regard, two thousand dollars. I also will and bequeath to my little friends, Gerry and Edith Jones, children of Gen. E. F. Jones, the sum of one hundred and fifty dollars each. 2607

*Ninth.*—I will and bequeath to my uncle, Chester Dwight, “provisionally,” that is to say : to direct and for his own use and benefit, if he is so circumstanced at the time of my death that he can hold the same for the sole benefit of himself and family;

2608 should he be hampered with indebtedness or otherwise, so that this bequest would not go as designed, then I direct my executors and executrix to invest and pay over the said legacy in such a manner that said Chester Dwight and family may have the full benefit, as intended, the sum of two thousand dollars; and to my cousin, Hattie Dwight, in kindly remembrance, five hundred dollars.

*Tenth.*—I will and bequeath to my aunt, Mary Dwight, of Cowdersport, Potter Co., Pa., for her sole use while living, and to be paid over to Orson Dwight or to his wife or children (in case of his death) at her death, or so much thereof as may be left, the sum of one thousand dollars.

2609 *Eleventh.*—I will and bequeath to my uncle, Orson Dwight, of Allegany, Potter Co., Pa., the sum of two thousand dollars, for the sole use of his family; and this bequest is to be governed by the same provision as contained in the ninth subdivision of this will, and I direct that the money be received and invested by my friends, uncle Norman Dwight, of Hebron, Potter Co., Pa., and Hon. A. C. Olmsted, of Cowdersport, Pa.; and I direct also that my said two friends, Dwight and Olmsted last named, invest the said one thousand dollars herein bequeathed to my aunt, Mary Dwight, in such manner as shall best promote the comfort and future well being of my said uncle and aunt mentioned in subdivision ten and eleven of this instrument; also I will and bequeath to Julia Whitford one thousand dollars, and I make chargeable on my estate, to furnish her father and mother with a house and garden, rent not to exceed \$100 per annum, for their lives.

*Twelfth.*—I will and bequeath to John Dusenbury, of Portville, New-York, the sum of seven

hundred and fifty dollars, in recognition of his kindly and practical assistance in my days of need.

*Thirteenth.*—I will and bequeath to Edgar Dusenbury, of Portville, New-York, the sum of seven hundred and fifty dollars, in recognition of kindly assistance, and as a mark of my regard. 2611

*Fourteenth.*—I will and bequeath to my brother, Ward A. Dwight, and wife of Chicago, Ills., the sum of three thousand five hundred dollars, as a mark of brotherly regard, and in return for practical help given me when first starting after my financial misfortunes; I can never forget their kindness; and I also will and bequeath to them one-half interest in my "Burial Casket Patent," unless disposed of by me prior to my death.

*Fifteenth.*—I will and bequeath to my brother-in-law, Seymour Coleman, and my sister, Mrs. Seymour Coleman, the sum of fifteen hundred dollars, in recognition of their practical kindness and assistance towards me when friends were valuable, and in brotherly regard; and I will and bequeath to them also one-half interest in my "Burial Casket Patent," unless disposed of by myself prior to my death. 2612

*Sixteenth.*—I will and bequeath to my brother-in-law, William Ayer, and to my sister Sarah, his wife, the sum of five hundred dollars, as a mark of brotherly remembrance. 2613

*Seventeenth.*—I will and bequeath to my brother-in-law, T. F. McDonald, and to my sister Bessie, his wife, the sum of five hundred dollars, in brotherly remembrance; and I also will and bequeath to George Pratt, cashier First National Bank of Binghamton, N. Y., as a mark of esteem, and in kindly remembrance of our long and pleasant

business and social relations, the sum of one thousand dollars.

2614 *Eighteenth.*—I will and bequeath to my father-in-law and mother-in-law, George and Ruth Dusenbury, the sum of five hundred dollars (in case they survive me), more as a mark of deep and earnest regard to them for their unvarying kindness to me and mine than from any other motive. In case of their decease before mine, then this bequest to be void, as it will not then serve my purpose, which is simply to put on record my deep obligation to, and my earnest respect for, them.

2615 *Nineteenth.*—I will and bequeath to my brothers-in-law and sisters-in-law, as a mark of kindly remembrance, as follows: To Whitmore Dusenbury and wife, five hundred dollars; to John H. Dusenbury and wife, five hundred dollars; to the three children of Kate Rose, deceased, viz.: Mary, George and "Nan," five hundred dollars; to Edgar Dusenbury and wife, five hundred dollars; to Ruth Owen and her husband, five hundred dollars; to Sally Osborn and husband, five hundred dollars; to William Dusenbury, five hundred dollars. I will also, include in these bequest, the following legacies to persons not related to me: To my little friend Hellen Hallock, of Binghamton, N. Y., the sum of five hundred dollars, to be invested by her mother for her use, should my death precede her becoming of legal age:

2616 To William F. Chadburn the sum of two hundred and fifty dollars, in kindly remembrance, and as slight testimonial of his honesty and faithfulness while in my employ.

To Mary Hart, wife of Henry J. Hart, in kindly remembrance and as a mark of respect for faithfulness and devotion to my interest while in the employ of the Dwight House, two hundred and fifty dollars.



To Jack Armstrong, colored, in kindly remembrance, fifty dollars.

To Isaac Jenkins, colored, in kindly remembrance, fifty dollars.

To my little friend Rally, son of Henry and Addie Smith, to be held for him by his father, unless of legal age at the time of my death, the sum of two hundred and fifty dollars. 2617

To my little friend Marie Sears, daughter of Chas. Sears, in kindly remembrance, to be used for own in the purchase of some little keepsake, to remember the donor by, two hundred and fifty dollars.

*Twentieth.*—I will and bequeath to Hon. O. W. Chapman and Hon. Celora E. Martin and Egbert A. Clark, the sum of ten thousand dollars, in trust for the use and benefit of the deserving and needy poor of the City of Binghamton. The said ten thousand dollars to be paid by my executors to the said trustees, who shall invest the said sum in perfectly safe farm mortgages, and the interest or income thereof shall be annually on the first of December in each year, be paid over to a committee to be appointed by all the clergymen, ministers and priests who are residents of and have charge of a church or congregation, in the City of Binghamton, or a majority of them, embracing all denominations in assembly. The said committee shall expend or apply the interest or income of said legacy as follows: They shall provide and see that every needy and poor family, living in the city of Binghamton, be provided with a good and substantial Christmas dinner, confining this charity to no particular race, creed or color, but for the once in the year making God's poor happy with a full belly. Should the interest or income on said bequest be more than required for the above specified purpose, then the committee to expend the surplus in their discretion for the com- 2618. 2619

forts that will most benefit the deserving poor. And the said trustees shall see that the said committee annually appointed by the clergymen in assembly as aforesaid, faithfully, honestly and impartially discharge the duty imposed upon them as above specified.

- 2620 To the persons who shall be pastors of the four churches in Windsor village, my native town, at the time of my death, I give the sum of one thousand dollars, to be used by them for Sunday School books, or for such other purposes as they deem will best serve their respective churches, to wit :

To the Methodist Episcopal Church, two hundred and fifty dollars.

To the Presbyterian Church, two hundred and fifty dollars.

- 2621 To the Free Methodist Church, two hundred and fifty dollars.

To the Episcopal Church, two hundred and fifty dollars.

- 2622 To Hon. Wm. B. Edwards, Hon. C. E. Martin and Stephen C. Millard, Esqs., I give and bequeath the sum of seven thousand five hundred dollars, in trust for the use and benefit of the Binghamton Library Association. I direct said Trustees to expend twenty-five hundred dollars as soon after this bequest is paid to them as practicable, for such books as in their judgment are most needed, the balance five thousand dollars to be invested by them, and the interest, annual or semi-annual (as the case may be) to be expended for library purposes, in the discretion of the said Trustees.

To the press of Binghamton, one thousand dollars, in kindly recollection of their always earnest efforts to assist me in the promotion of any project that would work to the future interest of the City. And I appoint Abram. W. Carle of the *Leader*, Peter D. Van Vradenburg, of the *Republican*, and Geo. Lawyer of the *Democrat*, as Trustees for such fund.

The annual interest to be used for a yearly banquet or dinner for the editors, foreman, and such other guests as they may choose to invite, with the hope that the same may tend to promote a kindly spirit towards each other, and a pleasant recollection of the donor.

To the Fire Department of the City of Binghamton, in friendly remembrance for their always kindly acts towards me and mine at all times and on all occasions, the sum of five thousand dollars ; and I hereby appoint Tracy R. Morgan, Neri Pine and George Lyon, Trustees to take charge of said fund, to be safely invested by them ; and the annual interest to be paid over to a committee of the fire department and devoted to an annual dinner or banquet for the whole department, with hope on the part of the donor that such meeting may tend to the unity and happiness of the recipients. 2623

*Twenty-first.*—To my much loved and only son, Frank Dwight, instead of bequest, I have caused my life to be insured directly to him, in the sum of fifty thousand dollars, and I purpose to increase the said amount to seventy-five thousand dollars. I desire and direct that in case of my death while my son is under legal age, that his mother, Anna N. Dwight, shall be appointed his general guardian, with full power to act for him in all ways, having full control of his property and person until he becomes of legal age. I also desire and request my friends Orlow W. Chapman and Celora E. Martin to act as advisers and counsellors to my wife and boy, and would suggest as investments of his estate sound farm mortgages, or Registered Government Bonds. Safety in this case will be more desirable than large per cents ; and a sound and practical bringing up of my boy is more desirable than any frothy brilliancy of style, that he may grow up to be a man in the broad acceptation of the word has always been my earnest wish. 2624, 2625,

*Twenty-second.*—To Anna N. Dwight, my darling wife, the best and truest of women, in addition to about twelve thousand dollars insured directly to her on my life, I give, devise and bequeath to her everything of which I die possessed, both real and personal, after deducting from my estate the bequests made in this will, from subdivision one to twenty inclusive, for her own use and disposal, absolutely and forever; provisionally, that is to say: If my said wife, Anna N. Dwight, at the time of my death, is free from all indebtedness or has not a greater amount than the said twelve thousand dollars insured on my life direct to her, will discharge, or if she, under the laws of our land in bankruptcy, get a discharge from all indebtedness, or if by compounding or settlement direct by giving her creditors everything of which she is possessed prior to my death, she can wipe out and fully liquidate all claims against her, then the bequest made in the fore part of this subdiv. to Anna N. Dwight shall be of full force, and she shall have and hold the same for her own use and benefit. But in case my wife, Anna N. Dwight, is unable to make full and complete settlement with her creditors, by giving up all of which she is possessed prior to my death, or is unable to obtain her discharge from the same in the bankruptcy courts of our land, then the bequest made to Anna N. Dwight in the fore part of this subdiv. shall be null and void and of no force; and I direct that the portion of my estate covered by the said bequest, less the twelve thousand dollars on my life to her shall be paid over to my son, Frank Dwight, if of legal age at the time of my death, if not of legal age, I direct that it be paid over to his guardian and held for him until he arrives at legal age, or until such time after his legal age as in the judgment of his guardian and her advisors and counsellors herein named, it shall be best for him to receive the same. If owing to the failure of Anna N. Dwight, to get

her legal discharge as aforementioned, and this bequest aforementioned should go to my son Frank in accordance with this my will, so I charge my son Frank to always to treat this bequest that his mother shall never have cause to regret the change in the disposition of the bequest as he hopes for happiness here or hereafter. I, his father, so charge him. In case of the death of both my wife and son, prior to my own, then I direct that the balance of my estate, after first doubling all the bequests, shall be held by a committee, formed of three leading lawyers of the city of Binghamton, to be appointed by the General Term of the Supreme Court, to use fore purely charitable objects for the city of Binghamton; or at the option of the said committee, one-half of said amount may be used to increase and enlarge the library of the Binghamton Library Association.

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*Twenty-third.*—I desire and do hereby constitute and appoint my wife, Anna N. Dwight and my friends Hon. Orlow W. Chapman and George Lyon, of Binghamton, N. Y., to be executrix and executors of this, my last will and testament; and that after my estate is duly settled, that either or both the executors, and my friend, Hon. C. E. Martin, shall always, during their lives, act as advisors and counsellors to my wife and boy.

*Twenty-fourth.*—In case of the death of any person mentioned in No. 1 to 20 prior to my own, and such persons shall leave neither wife or children, then, in each such case the bequest shall be null and void, and shall not be paid, but pass to the remaining legatees my intention being to go no further than the wife and children, therefore beyond such legal heirs are not included. In case of all bequests the expenses of guardians or trustees (in caring for my son Frank in case he is not of

2631



legal age at my death, or has not received the bequest in accordance with this my will), and in investing and taking care of said funds, shall be paid (her or them) from the income of said fund, such amounts for services for each year shall be agreed upon by my executrix or executors, or a majority of them, as shall seem to them a fair compensation for services so rendered, in all acts of my executrix and executors I contemplate the legality and binding force, provided there is always the action of one executor in connection with the executrix. In case Guardian, Executor or Trustee should die before me, or decline to serve, then I direct that such vacancy should be filled by appointment by three justices of the Supreme Court of this district, and such appointees shall have as full power as those named in this instrument.

2632 *Twenty-fifth.*—This my last will and testament is made on the basis of the present value of my estate in case of death at this date. My estate is made up most entirely of life insurance, which amount I do not propose to ever materially lessen. I have lived to that age, and been subject to such experience, that I have no father ambition for myself beyond leaving my family comfortable, and with sufficient means to enable them to live as they were in the habit of heretofore, and also in making such friendly bequests to those who are endeared to me from association and kindly acts as will leave pleasant memories behind me

2634 when I start on the long journey. I find, in looking over the past of my business life, while working and doing business for profit, I averaged upwards of twenty thousand dollars a year; my home or Binghamton enterprise was not started or executed for profit, but with a view of doing something worthy of the city and myself. It resulted in financial failure and the loss of all my accumulations for years. Since my failure in this enter-

prise, with no capital worth mentioning to start with, I have avaraged over ten thousand dollars for twelve months. Judging from this and from the past, I apprehend no difficulty in a return ten to twenty thousand dollars a year for my work, when acting strictly for gain. I have, therefore, made this, my last will and testament, fully believing that I can keep the premiums upon the present amount of life insurance I am carrying, and that my estate will not lessen in the future from its present value. If, however, sickness, or any other cause, should destroy my ability to pay my life insurance premiums, and thereby lessen the present value of my estate, then all the bequests mentioned in this, my will, should be scaled down in exact proportion to the difference as between the present value of my estate and the value of the same at the time of my death ; but no increase of my estate on account of increase by accumulated profits on life policies, or on increase of insurance, shall increase any bequest. And I direct, in the final execution and settlement of this, my last will and testament, that the foregoing shall govern the size of the bequests, namely : If my estate has not lessened from its present volume at this date at the time of my death, then the bequests aforemade to be paid in full ; but in case of lessening of estate at time of my death, then the bequests to be governed by the exact rates they bear to the estate then as now, and to be saled down accordingly.

*Twenty-sixth.*—I desire that my body shall be buried in our lot in the Spring Forest Cemetery, Binghamton, N. Y., and that in whatever part of the country I may pay the debt of nature, this, my request, shall be fulfilled if practicable. My most disinterested business efforts in life were made for the good and well being of the city of Binghamton, and whatever the results may have been, I believe that a large majority of the Good Citizens

appreciate my good intents, even though resulting in partial failure. I, therefore, wish to rest amongst them.

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In witness whereof, I have hereunto subscribed my name and affixed my seal, the                      day of September, in the year of our Lord, one thousand eight hundred and seventy-eight.

WALTON DWIGHT. [L.S.]

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The above written instrument was subscribed by the said Walton Dwight in our presence, and in the presence of each of us, and acknowledged by him to each of us, and he, at the same time, declared the above instrument so subscribed to be his last will and testament, and we, at his request, have signed our names as witnesses hereto in his presence, and in the presence of each other, and written opposite our names our respective places of residence.

B. N. LOOMIS,  
Of Binghamton,  
Broome Co., N. Y.  
CHAS. W. LOOMIS,  
Binghamton, N. Y.

---

2640

**Exhibit 93.**

[Read at page 348.]

MUTUAL BENEFIT LIFE INSURANCE CO.,  
Newark, N. J.

SEPT. 19th, 1878.

WALTON DWIGHT, Esq.,  
Windsor, Broome Co., N. Y.

*Dear Sir.*—We have received, from what appears

reliable source, information to the effect, that you have on two occasions raised blood. As no mention of this is made in your application, you will perceive the importance of its bearing on your policies, and we trust you will reply at an early date.

Yours truly,  
LEWIS C. GROVER,  
*Pres't.* 2641

-----  
**Exhibit 91.**

[Read at page 348.]

WINDSOR, N. Y., 23d, 1878.

LEWIS C. GROVER, Esq.,	.....	
<i>Pres. M. B. L. Ins. Co.,</i>	Mutual Benefit Life Ins. Co.,	
Newark, N. J.	Newark, N. J.	
	Rec'd Sept. 24, 1878.	2642

*My der Sir.*—Yours of 19th duly at hand. In reply there is not one word of truth in these foolish reports going the rounds, that I have had *hemerjes* of lungs, &c., &c.

I would be greatly obliged to you if you will give me the auther. I can refer you to every Dr in Binghamton, who have known me from 10 to 25 years, & to Dr. Brooks of Chicgo, who prescribed for me three or four times last spring, the only Drs. I have had any connection with for years. "In justice to me you should give me the auther of these reports." Other Cos have heard the same thing, and it puts me in a false position, that is exceedingly unpleasant. 2643

Hastily yours,  
WALTON DWIGHT.

P. S.—Your own Drs who examined me should know better than to put credence in these foolish rumors.

**Exhibit 95.**

[Read at page 348.]

**RETURN REGISTERED-LETTER RECEIPT.**

NOTE.—This return receipt, after being signed by the party to whom the letter or package which accompanies it is delivered, must  
 2644 be immediately inclosed to the Postmaster at the office, where it originated.

Should the registered letter not be delivered, this receipt must be forward with it, in due course, to the Dead Letter Office,

No. 541.

Mailed at

Newark, N. J.  
 Correct.  
 Oct. 23, 1878.  
 William Ward, P. M.

187

By Mut. Benft. Life Ins. Co., a letter addressed to Col. Walter Dwight, Windsor, N. Y.

Stamp here the office and date of delivery.

2645

Binghamton, N. Y.  
 Oct. 25.

BINGHAMTON.

Received the above described letter.

Sign }  
 here }

WALTON DWIGHT,  
 PR. NERI PINE.

**Exhibit 96.**

[Read at page 348.]

NEWARK, N. J., Oct. 7th, 1878.

Col. WALTON DWIGHT,  
 Windsor, New-York,

2646

*Dear Sir.*—Upon further investigation concerning the history of yourself and family in reference to the insurance we have on your life, our information leaves no doubt that the risks were not such as we would have taken had we been advised of all the facts material for us to know before the policies were issued. We write to say that in case of your death we will decline to pay the policies. We re-



spectfully request you to return them to us for cancellation, and we will refund to you the amount we have received for premiums thereon with interest.

Yours truly,  
(Sgd.) LEWIS C. GROVER,  
*Pres't.*

2647

**Exhibit 97.**

[Read at page 348.]

“NEWARK, N. J., Oct. 22, 1878.

Col. WALTON DWIGHT,  
Windsor, New-York.

*Dear Sir.*—We enclose copy of letter written you on the 7th inst.

Not hearing from you we have feared you did not receive the letter, and hence enclose this copy 2648 and send it by registered letter. We shall await your reply.

Yours truly,  
LEWIS C. GROVER,  
*President.”*

**Exhibit 98.**

[Read at page 350.]

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY. 2649  
Post Office Square.

BOSTON, Oct. 4th, 1878.

WALTON DWIGHT, Esq.,  
Windsor, N. Y.

*Dear Sir.*—It is my duty to inform you that no further payment of premium upon the policy issued by this Company upon your life will be accepted

by the Company or any person acting on its behalf ;  
and that payment of any claim upon the policy, if  
the same shall be hereafter demanded, will be re-  
sisted. The quarterly notes are in the possession  
of our Superintendent of Agencies, Mr. Geo. W.  
Thompson, who will hand you this letter, and will  
2650 return the notes and the cash payment made by  
you, upon surrender of the policy.

Yours truly,

BENJ. F. STEVENS,  
*Pr.*

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**Exhibit 99.**

[Introduced at page 407]

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**Exhibit 100.**

[Read at page 467.]

\$100.00.

2651

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK  
Of Binghamton.

U. S. Internal  
Revenue  
Two Cent  
Stamp.

Pay to the order of Neri Pine  
One Hundred Dollars.  
No. 157.

T. F. McDONALD.

Endorsed,  
NERI PINE.

T. F. McDonald,  
Attorney-at-law.

\$100.00.

2652

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK  
Of Binghamton.

U. S. Internal  
Revenue  
Two Cent  
Stamp.

Pay to the order of Neri Pine  
One Hundred Dollars.  
No. 156.

T. F. McDONALD.

Endorsed,  
NERI PINE.

T. F. McDonald,  
Attorney-at-law.

\$200.00.

T. F. McDonald,  
Attorney-at-law.

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK  
Of Binghamton.U. S. Internal  
Revenue  
Two Cent  
Stamp.Pay to the order of Norman  
W. Batchelder, Two Hundred 2653  
Dollars.

No. 155.

T. F. McDONALD.

Endorsed,

NORMAN W. BATCHELDER.

\$200.00.

T. F. McDonald,  
Attorney-at-law.

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK  
Of Binghamton.U. S. Internal  
Revenue  
Two Cent  
Stamp.Pay to the order of Norman 2654  
W. Batchelder, Two Hundred  
Dollars.

No. 154.

T. F. McDONALD.

Endorsed,

NORMAN W. BATCHELDER.

\$100.00.

T. F. McDonald,  
Attorney-at-law.

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK  
Of Binghamton.U. S. Internal  
Revenue  
Two Cent  
Stamp.Pay to the order of Neri Pine,  
One Hundred Dollars.  
No. 159.

2655

T. F. McDONALD.

Endorsed,

NERI PINE.

\$100.00

2656 T. F. McDonald, Attorney-at-law.

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK

Of Binghamton.

Pay to the order of Neri Pine,  
One Hundred Dollars.

No. 158.

T. F. McDONALD.

Endorsed,  
NERI PINE.

---

\$100.00.

2657 T. F. McDonald, Attorney-at-law.

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK

Of Binghamton.

Pay to the order of Norman  
W. Batchelder, One Hundred  
Dollars.

No. 153.

T. F. McDONALD.

Endorsed,  
NORMAN W. BATCHELDER.

---

\$100.00.

2658 T. F. McDonald, Attorney-at-law.

BINGHAMTON, N. Y., Sept. 3, 1878.

THE MERCHANTS' NATIONAL BANK

Of Binghamton.

Pay to the order of Norman  
W. Batchelder, One Hundred  
Dollars.

No. 152.

T. F. McDONALD.

Endorsed,  
NORMAN W. BATCHELDER.

**Exhibit 101.**

[Read at page 484.]

\$43. BINGHAMTON, N. Y., Sept. 6, 1878.  
 SUSQUEHANNA VALLEY BANK.  
 U. S. In. Revenue : Pay to M. J. Keeler, agent or 2659  
 2c. stamp. order, Forty-three Dollars.  
 No. NERI PINE.  
 (Endorsed) M. J. Keeler, Ag't.

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**Exhibit 102.**

[Read at page 484.]

\$346.00. BINGHAMTON, N. Y., Sept. 10, 1878. 2660  
 SUSQUEHANNA VALLEY BANK.  
 U. S. In. Revenue : Pay to J. G. Orton, or order,  
 2c. Stamp. Three hundred forty-six Dollars.  
 No. 58. NERI PINE.  
 (Endorsed) J. G. Orton.

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**Exhibit 103.**

[Read at page 484.]

2661

\$43. BINGHAMTON, N. Y., Sept. 12, 1878.  
 SUSQUEHANNA VALLEY BANK.  
 U. S. In. Revenue : Pay to H. S. Monroe, or order,  
 Stamp, 2c. Forty-three Dollars.  
 No. 59. NERI PINE.  
 (Endorsed) H. S. Monroe.



**Exhibit 104.**

[Read at page 484.]

\$26  $\frac{48}{100}$ . BINGHAMTON, N. Y., Sept. 13, 1878.

2662 ..... SUSQUEHANNA VALLEY BANK.  
 ..... U. S. In. Revenue : Pay to N. W. Batchelder, or  
 ..... Stamp, 2c. : order Twenty-six  $\frac{48}{100}$  Dollars.  
 No. 60. NERI PINE.

(Endorsed)

N. W. Batchelder.

For collection and credit for account of  
 First National Bank of Albany, N. Y.

A. Van Allen, Cashier.

Pay J. W. Mainer, Cashier, or order, for collection.  
 Wilber National Bank, Oneonta, N. Y.

E. A. Scramling, Ass't Cashier.

2663

**Exhibit 105.**

[Read at page 484.]

BINGHAMTON, N. Y., Sept. 20, 1878.

\$158.60.

SUSQUEHANNA VALLEY BANK.

Pay to N. W. Batchelder or order One hundred  
 fifty eight  $\frac{60}{100}$  Dollars.

No. 62.

NERI PINE.

(Endorsed)

2664 N. W. Batchelder. For collection and credit.  
 For account of First National Bank of Albany,  
 N. Y.

A. Van Allen,

Cashier.

Pay J. W. Manier,

Cashier or order for collection. Wilber National  
 Bank, Oneonta, N. Y.,

E. A. Scramling, Ass't Cashier.

**Exhibit 106.**

[Read at page 485.]

BINGHAMTON, N. Y., August 28, 1878.

\$86.50.

SUSQUEHANNA VALLEY BANK.

Pay to V. Finch, agent or order Eighty-six  $\frac{50}{100}$  2665  
Dollars.

No.

NERI PINE.

Endorsed :

V. Finch, Ag't.

**Exhibit 107.**

[Read at page 487.]

SUPREME COURT.

2666

JOHN F. SMYTH, as Superintend-  
ent, &c.,

*vs.*

ANNA N. DWIGHT, WALTON  
DWIGHT and others.

The defendant Walton Dwight for himself answering the complaint in this action, for answer thereto, or to so much and such part thereof as he is advised it is necessary or material for him to make answer to, saith :

2667

That the said plaintiff should not have and maintain this action against this defendant in so far as for personal judgment against this defendant for any deficiency arising from the amount realized from the sale of the premises failing to pay the

amount found due on said bond and mortgage, and alleges that on or about the 9th day of April, 1877, a petition was filed in the office of the Clerk of the District Court of the United States for the Northern District of New-York in which said District defendant then and for six months prior thereto resided, by certain creditors of this defendant praying that he might be declared and adjudged a bankrupt within the true intent and meaning of an act entitled "An Act to establish a uniform system of bankruptcy throughout the United States" approved March 2, 1867.

That thereupon an order was issued out of said Court requiring this defendant to appear before said Court at Syracuse, on the 1st day of May, 1877, and show cause why he should not be declared and adjudged a bankrupt. That said order was duly served upon this defendant within said Northern District of New-York more than five days previous to the return day of said order. That such proceedings were thereupon and thereafter taken that on the 1st day of May, 1877, this defendant was declared and adjudged a bankrupt within the true intent and meaning of the Act of Congress aforesaid, and a warrant was duly issued out of said Court to take possession of defendants' property, rights and credits of every kind and nature. That on the 8th day of June, 1877, Charles A. Hull and E. N. Fitzgerald were duly chosen and appointed assignees in bankruptcy of the estate and effects of this defendant. That said bankrupt proceedings are still pending, and the assignees therein have not been discharged.

That the claim against this defendant in this action is provable against him in bankruptcy, and was not created by the fraud or embezzlement of this defendant or his defalcation as a public officer, or while acting in any fiduciary capacity.

Wherefore this defendant demands judgment that this action in so far as it asks a personal

judgment against this defendant be dismissed,  
with costs.

NERI PINE,  
*Attorney for Defendant,*  
*Walton Dwight.*

STATE OF NEW YORK, } ss.: 2671  
*Broome County,* }

WALTON DWIGHT, being duly sworn, says that  
the foregoing answer is true of his own knowledge,  
except as to the matters therein stated to be alleg-  
ed on information and belief and as to those mat-  
ters he believes it to be true.

WALTON DWIGHT.

Sworn to before me, this 15th }  
day of November, 1878. }  
CHARLES W. LOOMIS,  
*Notary Public.*

[Endorsed.—Supreme Court. John F. Smyth, 2672  
as Superintendent, &c., against Walton Dwight  
and others. Answer of Walton Dwight. Neri  
Pine, Deft.'s Atty.]

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**Exhibit 108.**

[Read at page 503.]

BINGHAMTON, N. Y., AUG. 16, 1878.

CORNELIUS DOREMUS, Esq.

*Dear Sir.*—I have a case of a party who wants  
placed in good Companies, about \$100,000 insurance  
on his life, and my Company will only take \$10,000 2673  
on any one life.

Please write me what brokerage you can allow  
me. Also send me by *return* mail about 4 applica-  
tions medical vouchers, &c.

If you have no medical Examiner here—direct  
me who to appoint and send necessary papers.

Very truly yours,  
H. C. HERMANS.

**Exhibit 109.**

[Read at page 504.]

GERMANIA LIFE INSURANCE COMPANY,  
287 BROADWAY.

2674 CORNELIUS DOREMUS, SEC'Y.

NEW-YORK, AUG. 21st., 1878.

H. C. HERMANS, Esq., Binghamton, N. Y.

*Dear Sir.*—In ans. to yr fvr 16th and tel. of 20th, we send to day blank appls. & med. repts. Our examinations there we have made with Dr. J. G. Orton.

We cannot name any rate of brokerage until we know on what plan ins. is wanted, but we will say in advance that the rate will not be exorbitant, and that risks offered to us from outside sources are

2675 subjected to the severest scrutiny.

Respectfully yours,

C. DOREMUS, *Sec'y.***Exhibit 110.**

[Read at page 505.]

BINGHAMTON, N. Y., AUG. 22, '78.

C. DOREMUS, Esq.

*Dear Sir.*—Enclosed please find the following application.

2676 Walton Dwight, ordinary Life . . . \$10,000.

If application is accepted you may send the policy to the Merchants' National Bank of this city. Giving statement to them of am't of premium less brokerage & so with all the subsequent payments.

Very respectfully yours,

H. C. HERMANS.



**Exhibit 111.**

[Read at page 506.]

General Agency.

PHOENIX MUTUAL LIFE INSURANCE COMPANY  
of Hartford, Ct.

2677

---

Assets over \$10,000,000.

BINGHAMTON, N. Y., Aug. 28, 1878.

C. DOREMUS, Esq.

*Dear Sir.*—While coming up on the train last evening with Col. Dwight. He expressed himself so much pleased with your Co. that he would be willing to take \$20,000 in the Co., and that if you conclude to write him for \$15,000 or \$20,000 he will accept the cash value on the “paid up,” so as to make it even thousands. He was bit so badly formerly by getting in six or seven Cos. that went up that he is very particular now. 2678

Please write or telegraph me at your earliest convenience what your conclusions are.

Very Respectfully Yours,

H. C. HERMANS.

**Exhibit 112.**

2679

[Read at page 603-4.]

NOTE.—This exhibit was a copy of a medical certificate of Dr. Orton, produced by plaintiff, and has been mislaid, so that it cannot be furnished for insertion here.

No question, however, arises upon this exhibit.

**Exhibit 113.**

[Read at page 645.]

PHŒNIX MUTUAL LIFE INSURANCE COMPANY.

AUG. 19, '8.

2680 A. G. FOWLER, Esq.,  
Chicago, Ill.

*Dear Sir.*—We have an application for \$10,000 on Mr. Walton Dwight of Binghamton. He states that his mother died at 35 of consumption. Can you tell me the family record of his mother's family, that is, brothers and sisters, if she had any? Was the disease hereditary or acquired with her? He also states that he was sick in Chicago last spring. Can you tell if this was anything serious? Is he subject to rheumatism or dyspepsia?

2681 Yours truly,

J. M. HOLCOMB,  
*Secretary.*

**Exhibit 114.**

[Read at page 646.]

BINGHAMTON, August 16, 1878.

J. M. HOLCOMB, Esq.

2682 *Dear Sir.*—Inclosed please find the following application:

Walton Dwight, ordinary life, ten thousand dollars.

He wishes it in five policies as follows: One five thousand, one two thousand, and three of one thousand each.

ROBERT BROWN,  
H.

Autopsy of Col W. D. Wright  
Nov 18 1878 9.10 am

Body put in ice, Nov 16 11 am.

External inspection -

Anterior surface of body, . . .

Cicatrix on external aspect  
of left thigh about its middle,  
probably from a gunshot wound

Dr. S. Smith notes a heavy  
indentation <sup>upward & backward</sup> extending <sup>from</sup>  
on Hyoides <sup>to right</sup> around back of  
neck - & on left side below the  
thyroid cartilage running upward  
& backward at about an angle  
of  $45^{\circ}$  -

— Dr. Smith  
& Dr. Ayer think the force  
caused by bending head & neck  
backward -



Posterior aspect of body.

Posterior aspect of left thigh  
at its middle another cicatrix  
as from a bullet

Post. Mortal destruction of  
Posterior portion of body small  
Ecchymosis in skin of back  
& Shoulders

Anterior part of right arm  
small ecchymosis

Inner Surface of Scalp  
& outer surface of calvarium  
nothing to note -

At Swinhoe's water fluid blood  
oozes from vertex of skull  
on removal of Calvarium





Skull Cap of normal  
thickness & density. Inner surface  
of skull cap normal

Dura Mater External surface  
at the root to skull, Pacchianian  
bodies unusually large & project  
through dura mater.

At Sphenoid suture to enter  
the coryng of blood from dura  
mater opposite vertex of skull.  
point in skull where it is fixed

Inner surface of  
dura mater on right side  
normal vascularity

Inner surface of dura  
mater on left side. Chronic  
Pachymeningitis Haemorrhagic  
with a small extravasation of blood.

On Left side over posterior  
portion of Parietal & anterior



portion of occipital lobes.

Pia Mater of convexity.  
Normal, except discoloration, over  
occipital lobes, from blood.

Base of skull  
Dura Mater Normal

Base of Brain.

Pia Mater Normal, Middle  
Cerebral Arteries Normal,

Anterior Cerebral Arteries Normal,

Posterior Cerebral Arteries, Normal

Ventricles Normal

Substance of Cerebral lobes normal  
as to color + consistency except  
that the gray matter is a little darker  
than usual

Brain neither congested  
nor anæmic

Corpora Striata Optic  
Thalami Corpora Quadrigemina





*Modiola Oblongata* Normal

Weight 1 lb 10 oz

3 H 4 oz Adipose

Body

Rigor Mortis well marked,

Thick layer of subcutaneous adipose tissue. Muscle well developed, good color,

Omentum thickly loaded with fat. Abdominal viscera in normal position, except the liver, which is pushed upwards, and the pyloric end of the stomach, which is a little lower than it should be.

Thorax

Lungs & Heart in natural position except that the lungs are unduly inflated and that the Right Lung extends a little to the left of the Median Line



Left Pleural Cavity, old adhesions,  
about 4 oz of serum in bottom of  
pleural cavity.

No adhesions on Right side.

4 oz of clear serum on right side  
Amount of serum estimated not measured.

Pneumonia Normal,

Left lung 1 lb  $\frac{3}{4}$  —

Bronchi (left lung) congested  
lined with mucus.

Upper lobe (left lung)  
Congested & oedematous

Lower lobe (left lung)  
Still more congested & oedematous.

Right lung weight 2 lb

Bronchi congested & coated with  
mucus.

Upper lobe (right lung) at-  
the apex several small fibrous  
<sup>nodules</sup> ~~cystic~~ areas, probably the result of  
of old pulmonary Phthisis.



7  
Reel of upper lobe congested &  
Oedematous

Middle lobe - Normal

Lower lobe congested &  
Oedematous

### Heart

Weight 1.5 oz

Right Ventricle contains <sup>a little</sup> fluid  
blood. Pulmonary Valves a little  
thickened at their attached edges,  
otherwise Normal. Small clots -

Cavity of Right Ventricle about  
normal size. Walls  $3\frac{1}{16}$  inch thick

Tricuspid Valve slightly thickened  
Endocardium of Right Ventricle &  
Right Atrium - Normal

Left Ventricle contains a little  
fluid blood <sup>not to exceed  $\frac{1}{2}$  oz.</sup> Aortic Valves thickened  
a good deal thickened at their  
attached edges.





8

~~Right Ventricle~~ Left Ventricle,  
Wall  $\frac{3}{4}$  inch thick Cavity  
Normal size, Endocardium  
normal

Left Ventricle contains a little  
clotted blood, Mitral Valve  
thickened - Papillary Muscles  
slight increase in fibrous tissue

### Spleen

Weight  $\frac{3}{4}$  lb.

Normal in color & consistency &  
little soft.

Incision well rinsed out - clean  
The stomach was placed before  
opening - Stomach

contains a considerable amount  
of a thick greyish fluid  
containing portions of undigested  
food.

The contents of Stomach were  
then placed in 3 glass jars  $\frac{1}{2}$  in  
1 and  $\frac{1}{4}$  in each of other two



The Stomach at the fundus  
Mucous Membrane soft & +  
partly destroyed by Post-Mortem  
Changes. Pyloric end of Stomach  
Mucous Membrane studded with  
small white spots denoting <sup>Chronic</sup> Gastritis

The Stomach was then divided  
and placed in three jars, sealed  
& labeled - "Stomach of W. Wright  
Nov. 18 1878"

### Large Intestine

Contains Faeces - Solitary Glands  
slightly swollen throughout its  
entire length Mucous Membrane  
not congested.

Portions of <sup>Large</sup> Intestines were then  
placed in glass topped jars, three  
in number. Jars sealed up &  
labeled "Large Intestine of W. Wright Nov  
18 1878."





### Small Intestine

contains moderate amount of  
fluid Feces The Duodenum is  
a little congested + a little  
swelling of the Solitary Glands  
This is the upper end of the  
Duodenum —

### Upper part of Jejunum

Mucous membrane not congested,

a single aggregated gland  
swollen

### Ileum upper part —

Moderate congestion and some  
increase of mucous.

Aggregated Glands a little  
swollen.

Lower portion of the Ileum  
General congestion and pretty  
marked swelling of the solitary +  
aggregated glands.

(Portions of small intestine placed in three  
glass tinned jars, sealed & labeled "small intestine  
of a piglet Jan 18 1878.")



Liver

Weight 4 lb 15 oz

Fully congested rather more than usual  
Normal color & consistency.

Uterus

Left Uterus - Normal

Right Uterus - Normal

Left Kidney

Weight 6 oz.

Congested uniformly, capsule slightly  
adherent to surface of the kidney. Surface  
of the kidney smooth. Section appears  
normal to the naked eye.

Right Kidney

Weight 7 oz

Marked general congestion. Capsule  
slightly adherent. Surface smooth.  
no evidence of disease.

Bladder

Normal

Tongue, coated Papillae  
swollen. Tonsils normal for an adult.

Pharynx, Normal

Epiglottis Larynx + Trachea

Congested and coated with Mucous.



Portions of Liver & Kidneys were placed  
in glass topped bottles & sealed and labeled  
"Liver & Kidney of W Dwyer - Nov 18 1878"

Peritoneum Normal

Report of this ~~and~~ Autopsy  
read before those present -  
& no objection made thereto.

A. Lomack <sup>W</sup> Dwyer  
Remains Delafila Geo Burr  
J. G. Orton

John Swinburn  
H. A. Flyer

W. L. Ayer

J. W. Clutterbuck

C. B. Richards

John W. C. O. H.

D. Post Jackson

W. B. Lane

Lanning Griffin

T. L. Brown



